

PUBLIC DEFENDER COMMISSION



**Missouri State Public Defender System
Budget Request
Fiscal Year 2013**

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Budget Request Fiscal Year 2013

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September 30, 2011

Dear Governor Nixon,

Missouri continues to fail to meet its constitutional obligations to provide effective assistance of counsel to Missouri's indigent accused. This is not news to you, nor indeed to anyone with a passing familiarity with Missouri's criminal justice system.

This crisis has been raised by the last three Chief Justices of the Missouri Supreme Courtⁱ. It has been documented by the Missouri Barⁱⁱ and the subject of legislative committee investigationsⁱⁱⁱ. It has been the focus of a national symposium of legal scholars at the University of Missouri Law School^{iv} and the topic of editorials in all the major newspapers of the state^v. Our state has been held up by the Attorney General of the United States as an example of a broken indigent defense system^{vi} and our failings have been discussed in both the New York Times, and USA Today^{vii}. The issue has been debated, discussed, and universally acknowledged by both sides of the aisle on the floors of both the Missouri House and Senate, as well as by yourself in press conferences and in your veto message of SB 37 in 2009.

There have been steps in the right direction:

In 2009 we did receive 12 more lawyers, the first in almost a decade, by converting contract money to FTE. But caseload still far outstrips staffing.

In 2010 we received \$500,000 in stimulus funds to contract out a few more cases to the private bar. At an average cost of \$1,351 per case that contracted out 370 of the 2010 case overload.

Each of the last two years, we have received an additional \$250,000 to hire a combined total of 15 more support staff – of the 75 we need to come close to the ratio of support staff to attorneys found in Missouri's prosecuting attorney's offices.

We appreciate each and every action that moves us in the direction of compliance with the Sixth Amendment, especially in these times of budget cuts and belt-tightening. But as progress creeps, constitutional violations continue -- every day, in every courtroom, in every county of this state. The fact that we all *understand* the problem is of little comfort to the new generation of Joshua Kezers^{viii} or Dale Helmigs^{ix} who are being led off to prison for crimes they did not commit because of lawyers too swamped to thoroughly investigate their cases. Nor is it of assistance to the communities to which convicted defendants are returned at the end of their sentences without having received any of the

treatment or interventions that could turn their lives around because their lawyers had no time to investigate or present any of the alternatives to prison that could have made a difference.

SHOW ME JUSTICE: The Missouri Supreme Court has unanimously ruled that MSPD can close its doors to new cases when its lawyers are too overloaded to provide effective representation. This is not something Missouri Defenders do lightly. It is a last resort, coming only after more than a decade of attempts to find other solutions to too many cases and too few attorneys. Multiple public defenders have been called before the Office of the Chief Disciplinary Counsel just this year for things not done on cases or things not done in a timely manner. When one of our supervisors tried to explain that the delay was an unavoidable result of the lawyer's workload, OCDC responded with a letter that it is the supervisor's responsibility to move the case to a different attorney if the original attorney is too overloaded to handle the case properly. Unfortunately, there are no UN-overloaded attorneys to whom to move those cases. Missouri already asks its public defenders to work long hours on some of the most difficult cases for well below the salaries they could get in private practice or even across the courtroom in the prosecuting attorney's chair. Asking them to also risk their licenses to practice law or the very real possibility of malpractice judgments because we have knowingly piled on more cases than any lawyer can effectively handle, is simply going too far. We have no choice but to close the door.

As of this writing, eight district offices, serving 33 Missouri counties, have already been certified to begin turning away cases. All but four of the remaining offices around the state are eligible for such certification. Litigation is once again pending in the Missouri Supreme Court, arising out of a judge's attempt to appoint a public defender after the office had closed to new cases and courts

throughout the state are 'on hold' waiting to see the result. Indigent defendants charged with misdemeanors in Jefferson County are being told there are no lawyers available for them and defendants from Troy to Ava are being put on wait lists for defender services. The chaos is growing and it will only get worse. The time for study is over. It is time to *act*.

This budget lays out two alternatives for addressing Missouri's public defender case overload:

CONTRACT OUT ALL CONFLICT CASES AND FULLY STAFF THE PD SYSTEM TO HANDLE THE REMAINING CASES: This alternative proposes a two-pronged approach, which addresses the way MSPD handles conflict cases and the shortage of full-time public defenders. Crime is increasingly a social activity, with multiple defendants facing companion charges and pointing fingers at one another. In those circumstances, the local defender office can only represent one of the codefendants in a given case. The others must go elsewhere, either to another defender office or out to private counsel on a contract for representation. Historically, MSPD has sent the first co-defendant to another defender office and has only contracted second, third, (or more) co-defendants out to private counsel. However, this handling of conflict cases in-house is *not* a cost-effective approach. These cases pull lawyers out of their primary jurisdictions and require them to drive significant distances to other counties to appear for court, conduct investigations, witness interviews and depositions, visit their clients in that county jail, etc. It is not uncommon for each trip to eat up close to a day of the attorney's time to deal with one or two cases. In the long run, it is much more cost-effective and more efficient to contract all conflict cases out to attorneys in the private bar and then

staff the local offices to effectively represent the non-conflict cases that arise within the counties they are designed to serve. By contracting out just the conflict cases, you would drop the number of new attorneys needed by almost one-third and significantly increase the efficiency of those already on staff. This budget alternative further proposes phasing in the increased staffing over a three year period.

LEAVE MSPD CURRENT ATTORNEY STAFF AS IS AND CONTRACT OUT ALL EXCESS CASELOAD: MSPD is currently staffed to handle just 73% of its caseload, so this option would mean contracting out the 27% excess. Contract counsel have historically been more expensive than full time public defenders and there are serious questions as to the availability of sufficient qualified private criminal defense practitioners to pick up that many cases in the private market, but assuming they do exist and are willing to take on our existing case overload at current contracting costs, this option is one available choice for addressing the indigent defense case overload.

The enclosed budget also offers you and the legislature two new tools to assist in turning this picture around:

SOCIAL WORKERS: This item is closely tied to your initiative with the Pew Institute to reduce recidivism and corrections costs. From the mid-1990's into the last decade, MSPD had a handful of "Alternative Sentencing Specialists" – i.e., social workers -- with a proven track record of reduced recidivism for those defendants with whom they worked. The program was dismantled in order to turn their FTE into attorney positions because of the skyrocketing caseload and a staffing line that had remained flat for almost a decade. We do know, however, that it is a cost-effective way of reducing recidivism

and lowering corrections costs. If those dual goals are a priority for this year's legislative session, adding social workers to the public defender trial offices is a proven way of doing that. Social workers assess the individualized factors contributing to a defendant's presence in the justice system and develop client-specific sentencing proposals that address those factors by drawing upon community resources – third-party mentors, faith-based organizations, drug and mental health treatment options, etc. Unlike the post-plea sentencing reports prepared by probation officers (in only 15% of the cases according to Pew's research), this information is available to defenders and prosecutors as they *develop* plea agreements, as well as to the court prior to imposing a sentence, where the greatest impact on diverting appropriate people from prison can be made.

ATTORNEY SPECIALISTS: Overloaded trial lawyers simply do not have the time to become the subject-matter experts they need to be to effectively and accurately litigate such complex areas of criminal law as DNA, mental health issues, and the ever increasing use of forensic evidence. This is doubly true for the complicated maze of immigration consequences that accompany many criminal case outcomes and which lawyers are now required to both know and accurately advise their clients about under the recent U.S. Supreme Court case of *Padilla v Kentucky*^x. Ineffective assistance of counsel in these areas is among the most frequent causes of wrongful convictions and/or case reversals. This budget proposes the creation of a handful of attorney specialists in these areas to assist local trial offices faced with these issues in a specific case, much as the Attorney General sends a capital litigation specialist in to assist local prosecutors who lack such expertise themselves. Ideally, all of Mis-

souri's public defenders would be trained to address such issues as they arise in their cases, but the ideal is simply not possible given the caseloads under which the attorneys are now laboring. This proposal is one way of addressing that concern.

SUPPORT STAFF: For years now, MSPD's attorneys have struggled with a shortage of non-attorney staff. Every law practice management expert preaches that for a law office to be efficient and maximize effectiveness, lawyer time needs to be leveraged as much as possible. This is done by utilizing support staff for everything that can be done by a non-lawyer and freeing up the lawyer to do those things that only a lawyer can do. For this reason, most law offices employ more support staff than they do lawyers. By contrast, MSPD has only one legal assistant for every 10 lawyers, one clerical person for every 5 lawyers, and one paralegal for every 54 lawyers. One investigator is responsible for investigating the caseload of six attorneys. Federal wage and hour laws prohibit these non-exempt employees from working more than 40 hours per week without time and a half compensation and MSPD has no funding with which to pay overtime. As a result, lawyers who are already overloaded with too many cases are also being forced to pick up tasks that should rightfully be done by one of these support staff positions. We have judges and prosecutors and a courtroom full of people standing by, twiddling their thumbs, while the lawyers from the public defender office are in the clerk's office copying charging documents from court files before they can begin their first appearance docket. We have lawyers doing intake interviews and making indigency determinations, serving subpoenas, and running out to Wal Mart to buy the supplies with which to make their own trial exhibits. We

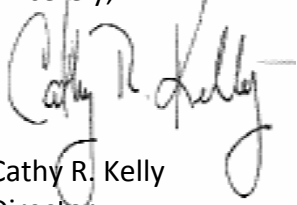
even have lawyers answering the reception telephone in offices with only one secretary who is out sick for the day or gone to lunch. Every minute a lawyer spends doing a task that should be done by a clerk or legal assistant, paralegal or investigator, is a minute that lawyer does not have available to spend working on his or her cases. In a time when Missouri's public defenders are being forced to turn away cases for a lack of attorney time to work on them, having those attorneys do *anything* that could be done by a non-attorney position cheaper makes no sense. Each of the decision items herein that includes the addition of more lawyers to the Missouri Public Defender System also includes the necessary corollary staff to support those lawyers. However, these do not address the critical shortage of existing staff to support the 377 attorneys MSPD already has and that too must be addressed if Missouri is to have an efficient, effective, fully-functioning defender system. This budget asks that you do so.

I do appreciate your recognition of the crisis that faces Missouri's Public Defender System. "Liberty and Justice for All" may be politically popular as a sound bite, but when it comes to paying for the reality, few are quite as willing to jump on the bandwagon. The fact that you have publicly stood up and said, 'this is a problem and I'm committed to finding a solution' means a great deal.

Your efforts to move us forward, even in tough economic times, have not gone unnoticed or unappreciated. But so much more is still to be done. For better or for worse, the founding fathers did not write in any rainy-day exceptions, or 'for good cause' out-clauses when they wrote the Sixth Amendment to the United States Constitution. The right to effective assistance of counsel in your defense when the government is trying to deprive you of

your liberty is not optional. It is not a good idea or a worthwhile suggestion. It is a *Constitutional Mandate*. One that has been ignored in Missouri for way too long. The time to address it is now.

Sincerely,



Cathy R. Kelly
Director

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- i. Chief Justice William Ray Price, *State of the Judiciary Speech, February 3, 2010*: “The first problem is how we are going to try all the people we arrest. We already have discussed the financial stress under which the court system is operating. But our public defenders and prosecutors are also stressed to the point of breaking. . . . The United States Constitution also requires timely trials of criminal cases. If there aren’t enough public defenders, the system cannot wait, and jail time cannot be threatened or imposed. The solution to this problem is relatively simple: either increase the public defender’s funding or tell the public defender who to defend and who not to defend within the limits of their funding. At present, you only allow the public defender to determine eligibility by indigency. That means only the poorest offenders will qualify, regardless of the severity of the crime. I would suggest that the most serious charges be targeted, and that the least serious charges be those for which jail time cannot be sought, if we cannot adequately fund the public

defender’s office. This is simple common sense. Spend our money where it counts.”

Chief Justice Laura Stith, *State of the Judiciary Speech, January 28, 2009*: “There is a serious public safety aspect of the public defender crisis as well. The federal constitution guarantees defendants both speedy trials and competent legal counsel. The inadequate number of public defenders, however, puts in question the state’s ability to meet either of these requirements. In short, if not corrected, defendants potentially could be set free without going to trial. The United States Supreme Court has said that it is presumptively prejudicial for a criminal defendant in state courts to have to wait more than eight months for trial where the delay was caused by the prosecutor. But, just two weeks ago the United States Supreme Court heard an appeal suggesting that it is also the state’s fault if gross underfunding causes public defenders to ask for continuances. Victims’ advocates have expressed very understandable concern this could result in vast numbers of criminals being set free because their public defenders were unable to take them to trial soon enough. Missouri does not want to find itself in the position of other states, such as Indiana, Montana and Washington, that were faced with the possibility of releasing prisoners or lawsuits from the ACLU if they did not fix their public defender crises. It also does not want to be like Louisiana, where the legislature had to seek a bailout from Congress for the public defender program to avoid releasing hundreds of prisoners.”

Chief Justice Michael Wolff, *State of the Judiciary Speech, January 25, 2006*: “We further pledge to work with the

public defender system in whatever way possible toward the attraction and retention of employees and toward the alleviation of its ever-increasing caseload. When I spoke earlier of the challenge of attracting and retaining good public servants, those words echo all too loudly in light of the crisis facing our public defender system. Often the test of a system of justice is not how it treats our best citizens, but how it treats those who appear to be our worst. No system of justice can be effective without adequate legal representation for criminal defendants. It is in the interests of all of us – even if it were not a constitutional requirement – that those whom the state deprives of liberty or life are guilty in fact and law of the crimes they are charged with committing. This goes to the legitimacy of the rule of law.”

- ii Report of the Missouri Bar Task Force on the Public Defender, 2005
- iii Report of the Missouri Senate Interim Committee on the Public Defender, 2007
- iv University of Missouri School of Law 2010 Symposium: *Broke and Broken: Can We Fix Our State Indigent Defense System?*
- v “Justice in Missouri Requires State Officials to Act,” Springfield News-Leader, February 17, 2011; “Public Defender Overload Eludes Viable Solutions,” Jefferson City News Tribune, July 27, 2010; “Improving Public Defender System is Predicament for Missouri,” Columbia Missourian, March 18, 2010; “In Defense of Public Defenders,” St. Louis American, December 17, 2009; “An Indefensible System,” Kansas City Star, December 14, 2009; “It Won’t Fix Itself,” Nevada Daily Mail, December 12, 2009; “Fixing Missouri’s State Public Defender System Isn’t Optional,” St. Louis

Post-Dispatch, November 25, 2009; “Public Defender System in Crisis,” Sedalia News-Journal, November 11, 2009; “Our Opinion: Public Defender Crisis Ignored,” Jefferson City News-Tribune, October 30, 2009; “State Must Pay Heed to Public Defenders,” Warrensburg Daily-Star Journal, July 30, 2009; “Action Needed to Ease Burden on Public Defenders,” Jefferson City News-Tribune, September 30, 2008; “Missouri Needs More Public Defenders,” Kansas City Voices, November 17, 2008; “State Ducks Its Duties,” Kansas City Star, August 4, 2008; “Justice on the Cheap” St. Louis Post-Dispatch, April 30, 2008; “Imperiling Justice,” Southeast Missourian, March 7, 2007; “Lack of Public Defenders a Disgrace,” Springfield News Leader, August 8, 2006; “A System in Crisis,” St. Joseph News-Press, March 23, 2006; “A Justice Crisis,” Southeast Missourian, February 26, 2006.

vi Speech by U.S. Attorney General, Eric Holder, at the Brennan Center’s Justice Legacy Awards Dinner, New York City, November 16, 2009. U.S. Department of Justice PRNewsWire.

vii “Budget Woes Hit Defense Lawyers for the Indigent,” New York Times, September 10, 2010; “Citing Workload, Public Lawyers Reject New Cases,” New York Times, November 12, 2008; “Across U.S., Public Defenders Refusing Cases,” USA Today, September 20, 2008. “Missouri Public Defenders May be Forced to Stop Accepting New Clients,” USA Today, February 27, 2007.

viii Joshua Kezer, ‘Kezer celebrates a year outside ‘the walls’, The Columbia Daily Tribune, February 21, 2010.

ix Dale Helmig, ‘Dale Helmig wrongly convicted of mother’s murder’, St. Louis Post-Dispatch, November 4, 2010

x *Padilla v Kentucky*, 130 S.Ct. 1473 (2010)

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PROGRAM DESCRIPTION

Department: Office of the State Public Defender

Program Name: Public Defender

Program is found in the following core budget(s): Legal Services, Legal Defense & Defender Fund,
Homicide/Conflict and Federal & Other

1. What does this program do?

The Sixth Amendment to the United States Constitution provides that, *"In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defence."* If an individual cannot afford to hire an attorney, the state must provide one for them in order for the prosecution to proceed. The Missouri State Public Defender System was created to meet this obligation of the State of Missouri. Its lawyers provide criminal defense representation to indigent defendants in all of Missouri's criminal trial and appellate courts, as well as in a variety of quasi-criminal matters which carry a right to counsel, such as juvenile delinquency cases, sexually violent predator commitment cases, petitions for release from the Department of Mental Health, probation revocations and post-conviction motions to vacate criminal convictions.

2. What is the authorization for this program, i.e., federal or state statute, etc.? (Include the federal program number, if applicable.)

Chapter 600 R.S. Mo, which was enacted to comply with the state's obligations under the U.S. Constitution and Missouri Constitutions:

In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defence.
Amend VI, U.S. Constitution

In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded, we declare: . . . That in criminal prosecutions the accused shall have the right to appear and defend in person and by counsel.
Article I, Section 18(a), Missouri Constitution.

3. Are there federal matching requirements? If yes, please explain.

NO

PROGRAM DESCRIPTION

Department: Office of the State Public Defender

Program Name: Public Defender

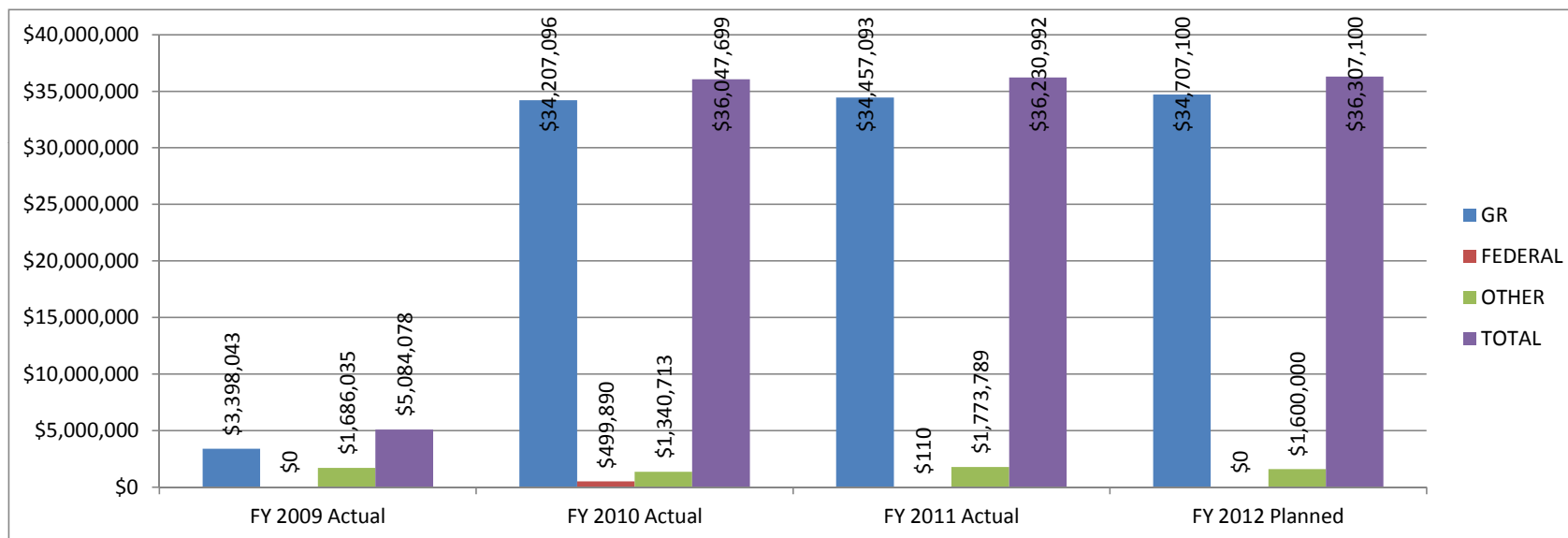
Program is found in the following core budget(s): Legal Services, Legal Defense & Defender Fund,
Homicide/Conflict and Federal & Other

4. Is this a federally mandated program? If yes, please explain.

Yes. The provision of counsel to indigent defendants facing prosecution and the potential loss of their liberty is federally mandated under the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defence.” Amend VI, U.S. Constitution Bill of Rights

5. Provide actual expenditures for the prior three fiscal years and planned expenditures for the current fiscal year.



6. What are the sources of the "Other " funds?

Legal Defense and Defender Fund

PROGRAM DESCRIPTION

Department: Office of the State Public Defender

Program Name: Public Defender

Program is found in the following core budget(s): Legal Services, Legal Defense & Defender Fund,
Homicide/Conflict and Federal & Other

7a. Provide an effectiveness measure.

There are four primary measures of effectiveness applicable to the Missouri State Public Defender System:

(1) **Case Law:** Through cases ruled upon by the United States Supreme Court, the Missouri Supreme Court and Courts of Appeal, specific standards of what does or does not constitute effective assistance of counsel in the representation of a criminal defendant have evolved. Where an attorney is found by the court to have failed to meet those standards, any conviction of the defendant must be set aside.

(2) **Missouri Rules of Professional Responsibility** are established by the Missouri Supreme Court and applicable to every attorney licensed to practice law within the State of Missouri. The Rules set out what is expected from a competent, professional attorney and are enforced by the Missouri Supreme Court through its Office of Chief Disciplinary Counsel. Failure to comply with these rules can result in actions being taken against the attorney's license, ranging from a formal reprimand up to and including permanent disbarment from the right to practice law within the state.

(3) **U.S. Department of Justice Caseload Standards for Public Defenders:** In December, 2000, the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance published the "Compendium of Standards for Indigent Defense Systems: A Resource Guide for Practitioners and Policymakers." The Compendium brings together standards for indigent defense programs from a variety of sources for purposes of comparison and best practices determinations. Included within that Compendium is the report of the Department of Justice's National Advisory Commission on Criminal Justice Standards and Goals [hereinafter, NAC], which has served as the foundation for the majority of public defender caseload standards throughout the nation. That caseload standard provides as follows:

NAC CASELOAD STANDARDS	
Non-Capital Homicides	12 cases per year or 1 new case per month
Felonies	150 cases per year or 12.5 new cases per month
Misdemeanors	400 cases per year or 33 new cases per month
Juvenile	200 cases per year or 17 new cases per month
Appeals	25 cases per year or 2 new cases per month

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(4) **MSPD Guidelines for Representation** adopted by the Missouri State Public Defender Commission, which set out the Commission's expectations of its attorneys in order to meet the above standards for effective representation of clients served by Missouri Public Defenders.

Unfortunately, the Missouri State Public Defender System is not currently able to meet any of these standards because it is staffed to handle less than 73% of the total caseload assigned to it this last year. The overload has forced lawyers and investigators alike to cut corners, skip steps, and make on-the-fly triage decisions in order to keep up with the deluge of cases coming in the door. As a result, effectiveness in many of these cases has gone by the wayside.

American Bar Association Ethical Advisory Opinion re Public Defender Caseloads: In 2006, the American Bar Association issued an ethical advisory opinion warning against ethical violations caused by excessive defender caseloads and highlighting the fact that public defenders are not exempt from the professional obligation of all attorneys not to take on more cases than they can effectively handle. That opinion cited the NAC caseload standards, above, as a base for defenders and courts to use in determining when public defenders are carrying excessive caseloads, but warned that other factors must also be taken into consideration such as availability (or lack of) support staff to assist the attorneys, time taken away from case preparation by other non-case-related duties, such as travel, training, management, etc., and the specifics of local practice that could impact the amount of time needed for handling particular case types. *See, ABA Formal Opinion 06-441: Ethical Obligations of Lawyers who Represent Indigent Criminal Defendants When Excessive Caseload Interfere with Competent and Diligent Representation, May 13, 2006.*

In recognition of this, in 2008, the Missouri Public Defender Commission utilized its statutory rule-making authority to establish **Maximum Allowable Workloads** for each district public defender office. Under the regulation, when the hours needed to handle the cases coming in the door exceeds the hours available to handle those cases, the office is deemed to have exceeded its maximum allowable workload for that month. When an office has been assigned more than its maximum allowable workload for three consecutive months, the office can be 'certified' and placed on limited availability for new cases. *See 18 C.S.R. 4-010 Rule for the Acceptance of Cases, eff. July 30, 2008.*

MSPD Protocol for Determining Maximum Allowable Workload: The protocol used to set maximum allowable workloads for each office compares the estimated number of attorney hours needed to effectively handle each case coming into the office to the number of attorney hours available in that office for handling cases. Obviously, it takes more time for an attorney to handle a murder than a misdemeanor case, so different case types are assigned different 'weights.'

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Determining Case Weights: The case weights utilized in MSPD's workload protocol were developed by utilizing the NAC Public Defender Caseload Standards described above, modified in a few instances where there was no NAC standard for a particular case type (e.g. post-conviction or probation revocation cases) and to account for known local practice variations (e.g. sex offenses are not separated out in the NAC standards but are known to be significantly more time consuming than other non-sex felonies, so are assigned a higher weight). The anticipated number of attorneys hours assigned to each case type is set out below:

MSPD MODIFIED NAC HOURS PER CASE TYPE	
Non-Capital Homicides	173 hours per case
Sex Offenses - A & B	31 hours per case
Other Felonies Offenses	14 hours per case
Misdemeanors	5 hours per case
Juvenile	10 hours per case
Appeals	83 hours per case
29.15 Cases	62 hours per case
24.035 Cases	21 hours per case
Probation Violations	5 hours per case

Determining Attorney Hours Available for Handling Cases: The other side of the equation is determining how many hours the attorneys in a given office have available to for handling cases. The protocol assumes a 45 hour work week. In reality, many defenders work significantly more than 45 hours a week, as do most attorneys. However, as state employees, defenders are not compensated for anything above 40 hours per week and, in fact, many defenders hold second, non-law jobs, in order to make their law school student loan payments on a public defender salary. Given those realities, the Commission chose to utilize a 45 hour work week for purposes of the protocol or a maximum of 2340 hours per year.

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All of those hours are not available for working on cases, however. Lawyers are required to attend at least 15 hours of continuing legal education per year in order to maintain their licenses. The State of Missouri grants them a certain number of holidays and a set amount of annual leave each year, which MSPD is bound to honor. While again, many attorneys wind up working those holidays and forfeiting unused annual leave, the Commission cannot *require* that, so those amounts must be deducted from the total number of attorney hours per year. The same is true of sick leave. The likelihood that any particular attorney will be out on sick leave for any given length of time is fairly slim in a given year, but in an organization of 377 lawyers, history proves that a fairly regular number of attorney hours will in fact be used up in sick or Family and Medical Leave and therefore not available for work on cases. The Commission's protocol addresses this fact by deducting an average of attorney sick leave used in the previous year from the number of annual attorney available for work on cases.

The American Bar Association Ethics Advisory Opinion cited above notes that time taken away from case preparation by other non-case-related duties must be taken into consideration in any reasonable maximum workload standard. An internal time-tracking study conducted by MSPD in which the attorneys were required to track their time in fifteen-minute increments revealed that about 13.7% of the attorney time was used up in non-case-specific tasks. Some of these are necessary administrative things, such as attending office meetings, filling out time sheets & expense reports, second-chairing newer lawyers in their offices on their cases or just answering their questions. Others are directly related to the shortage of support staff – clerical staff, legal assistants, paralegals, and investigators – discussed in Decision Item No. 5. This shortage results in lawyers spending time on non-lawyer tasks --doing intake & taking indigency applications, copying court files and police reports, making mail runs, and even covering the phones when the office's lone secretary leaves for lunch or takes a day of annual leave. This is time not available for work on cases and therefore must be deducted from the total hours available for case work.

The deductions described above result in a system-wide average of 1737.7 hours per lawyer per year that are available for actually working on cases. Multiply that number by the number of lawyers in a given office and you have the system's "Available Attorney Case Hours" shown in the various protocol charts throughout this budget.

2340.00	Standard Work Hours (45 hrs. *52 wks)
-65.80	Attorney Sick Leave
-216.00	Holidays and Annual Leave
<u>-320.50</u>	Non Case Related Hours (13.7%)
1737.70	Available Attorney Case Hours

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Homicide/Conflict and Federal & Other

There are unique circumstances within particular offices that also impact how many attorneys are available in that office which must be taken into consideration. E.g. offices that serve multiple counties lose what defenders have dubbed ‘windshield time’ – the time spent by the attorneys driving to and from court in other counties, as well as to and from jails and crime scenes and witness interviews in those counties, unlike those offices which only serve one county and only have to walk across the street or downstairs to make a court appearance or visit a client in jail. In recognition of these realities, the Commission’s protocol calculates the average ‘drive time’ of the previous year for each district office, a figure based upon the actual miles driven each month by the attorneys in that particular office as reported on monthly expense reports. In the protocol application charts depicted within this budget, those travel hours for each district office are added together into a collective pool of “Travel Hours” for the whole system and added to the number of total caseload hours as part of the determination of the Total Workload Hours for which staffing is needed. When the protocol is applied to a particular District Office to determine that office’s maximum allowable workload, only those travel hours applicable to that particular office are utilized.

The same is true with the Management Hours category shown on the protocol charts in this budget. In most offices, the District Public Defender or managing attorney of the office serves a dual role –supervising the office and also carrying a caseload. In those circumstances, the District Defender is counted as an attorney for the purpose of calculating the office’s (or system’s) total available attorney hours, but in reality only a portion of the District Defender’s time is available for case work. The remainder is used up with his or her supervisory responsibilities -- supervision of office procedures and employees, mentoring, in-office training, performance reviews, approval of bills and expense reports, monitoring of the office’s budget, serving as the office liaison to the courts and county commissioners, addressing performance concerns, ensuring compliance with applicable federal employment laws, etc. The amount of management time involved varies with the size of the office -- greater in offices with larger staffs to be supervised and less in the very smallest offices. In recognition of this range, the Commission’s protocol presumes a set amount of management / supervisory time per employee per month and deducts that from the pool of available attorney hours for work on cases. In the charts in this budget, the management hours needed within each Trial and Appellate District office are pooled together into a single statewide figure and added to the total Case Hours in order to accurately determine the Total Workload Hours for which staffing is needed. When the protocol is applied to a particular office to determine whether it has reached or exceeded its maximum allowable caseload, the management hours pertinent to that particular office are deducted from the total number of attorney hours available within the office to work on cases.

PROGRAM DESCRIPTION

Department: Office of the State Public Defender

Program Name: Public Defender

Program is found in the following core budget(s): Legal Services, Legal Defense & Defender Fund,
Homicide/Conflict and Federal & Other

Status of Litigation Respecting the MSPD Maximum Allowable Workload Protocol: In 2009, the question of the Commission's authority to set a maximum workload for Missouri's public defender offices by state regulation was litigated and reached the Missouri Supreme Court. The Supreme Court ruled that the Public Defender Commission does have the authority to set maximum workloads and to turn away cases when those maximums are exceeded, but it does not have the authority to triage the incoming cases so that public defender offices take the more serious cases and turn away the less serious cases. (Though the court agreed that would be a reasonable approach, it determined that would require a statutory authority the Public Defender Commission currently does not have.) Following the high court's ruling, the Public Defender Commission modified its state regulation on maximum workloads so that certified offices accept new cases each month up to their maximum allowable workload and then turn away *all* additional cases, regardless of case type, for the remainder of the month. Litigation has ensued regarding MSPD's reliance on this modified state regulation and the matter has once again reached the Missouri Supreme Court. As of this writing, the issue is still pending.

7b. Provide an efficiency measure.

The Missouri State Public Defender System's 384 lawyers opened over 80,000 cases last year, appearing in every courthouse in every county across the state, at an average cost to the state's taxpayers of just \$300 per case. This astonishingly low cost of indigent defense in Missouri – among the lowest in the nation -- is not a cause for celebration, however. It comes at a tremendous effectiveness toll and at the cost of widespread failure to provide indigent defendants the effective assistance of counsel that the U.S. Constitution's Bill of Rights guarantees them. There is a limit to the 'Do More With Less' mantra within the arena of criminal justice, and Missouri passed it sometime ago. Efficiency is further eroded by a shortage of support staff which makes it impossible to leverage our already short attorney time in the manner utilized in every efficiently run law firm. **Each of the decision items herein is designed to address this problem, increasing both efficiency and effectiveness.**

PROGRAM DESCRIPTION

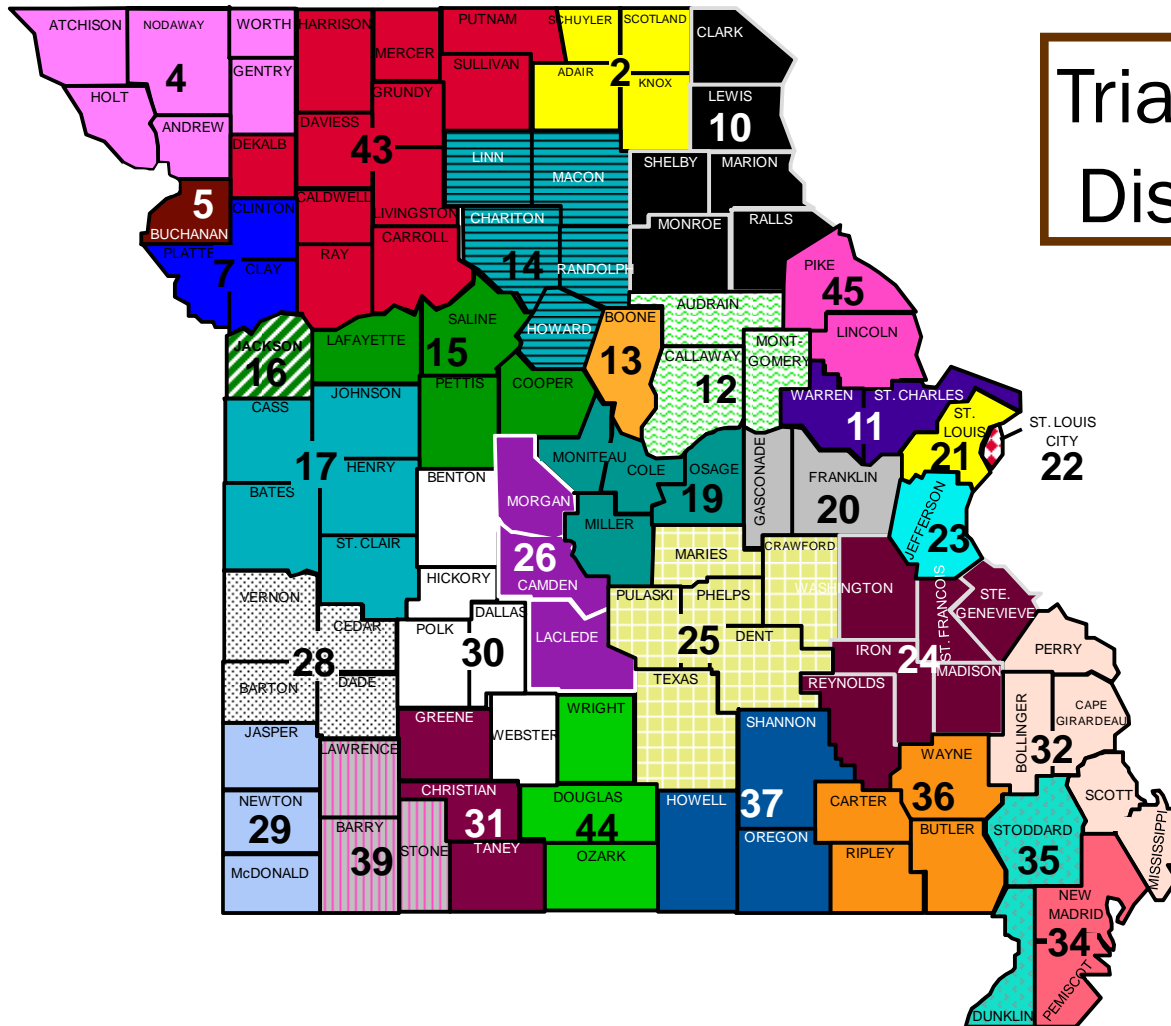
Department: Office of the State Public Defender

Program Name: Public Defender

Program is found in the following core budget(s): Legal Services, Legal Defense & Defender Fund,
Homicide/Conflict and Federal & Other

7c. Provide the number of clients/individuals served, if applicable.

<i>Missouri State Public Defender System</i> <i>Cases Assigned by Case Type</i>													
	Murder 1st	Other Homicide	Felony	Murder + Felony Caseload	Misdemeanor	Juvenile	PCR	Other	Probation Violation	Appeals	Total Opened	Total Closed	Closed to Open Ratio
FY11	148	149	35,753	36,050	22,767	1,893	1,088	119	20,066	913	82,896	80,137	0.9667
FY10	161	164	34,781	35,106	24,768	2,393	1,141	131	20,147	930	84,616	81,346	0.9614
FY09	121	180	33,226	33,527	25,181	2,513	1,264	181	19,518	898	83,082	81,704	0.9834
FY08	158	154	34,766	35,078	26,098	2,715	1,061	182	19,555	716	85,405	85,116	0.9966
FY07	174	161	35,109	35,444	27,816	3,380	828	129	19,157	743	87,497	85,133	0.9730
FY06	138	146	35,339	35,623	28,227	3,676	838	46	19,412	710	88,532	83,260	0.9405
FY05	156	124	33,282	33,562	28,931	3,881	937	120	20,012	688	88,131	87,180	0.9892
FY04	154	140	34,422	34,716	28,018	4,258	807	98	20,263	756	88,916	86,356	0.9712
FY03	195	114	35,425	35,734	25,807	4,147	806	103	18,479	832	85,908	81,059	0.9436
FY02	163	132	33,183	33,478	25,147	3,918	802	64	18,047	750	82,206	77,165	0.9387
FY01	182	125	29,934	30,241	22,903	4,488	711	82	17,663	698	76,786	73,438	0.9564
FY00	147	109	28,019	28,275	24,119	4,998	763	76	16,768	739	75,738	69,591	0.9188
FY99	182	108	28,892	29,182	23,721	4,629	797	112	14,488	809	73,738	74,570	1.0113
FY98	196	87	31,591	31,874	24,676	4,270	674	138	14,141	689	76,462	74,495	0.9743
FY97	169	79	29,663	29,911	21,912	4,075	513	156	13,437	839	70,843	67,870	0.9580
FY96	175	88	30,198	30,461	23,069	3,612	707	178	11,444	1,038	70,509	70,664	1.0022
FY95	256	109	27,688	28,053	17,696	3,916	719	165	9,362	1,138	61,049	61,710	1.0108
FY94	255	152	25,338	25,745	17,852	3,374	682	201	8,225	1,017	57,096	52,453	0.9187
FY93	301	136	24,402	24,839	15,883	3,146	766	249	7,301	872	53,056	52,363	0.9869
FY92	282	37	25,458	25,777	19,974	3,372	1,129	167	5,321	569	56,309	55,651	0.9883
FY91	193	63	21,304	21,560	13,941	2,713	588	169	5,051	820	44,842	49,038	1.0936
FY90	227	109	23,336	23,672	14,627	3,300	732	369	5,834	1,094	49,628	46,425	0.9355
FY89	193	149	20,838	21,180	12,902	3,298	1,342	418	5,074	1,243	45,457	42,532	0.9357
FY88	202	161	20,640	21,003	12,427	3,455	1,006	470	4,475	920	43,756	40,117	0.9168
FY87	199	145	19,254	19,598	11,736	3,564	755	443	4,308	728	41,132	37,081	0.9015
FY86	166	175	17,042	17,383	10,602	3,328	612	611	3,815	608	36,959	34,491	0.9332
FY85	152	172	15,397	15,721	9,126	3,500	543	522	3,293	632	33,337	32,410	0.9722
FY84	176	175	15,048	15,399	9,256	3,058	534	499	2,878	506	32,130	31,730	0.9876



Trial Division District Map

State Auditor's Reports, Oversight Evaluations and Missouri Sunset Act Reports

Program or Division Name	Type of Report	Date Issued	Website
Public Defender Commission	Audit	12/7/2004	http://auditor.mo.gov/press/2004-94.pdf

State Public Defender

DECISION ITEM RANKING

Budgeting Unit			FY 2013	FY 2013	*****	*****		
Decision Item	Rank		DEPT REQ	DEPT REQ	SECURED	SECURED	CUMULATIVE TOTAL	
Fund			DOLLAR	FTE	COLUMN	COLUMN	DOLLARS	FTE
OFFICE OF THE DIRECTOR								
CORE	001							
GENERAL REVENUE			32,149,041	585.13	0	0.00	0	0.00
TOTAL			32,149,041	585.13	0	0.00		
GRANTS								
CORE	001							
PUBLIC DEFENDER-FEDERAL & OTHR			125,000	0.00	0	0.00	0	0.00
TOTAL			125,000	0.00	0	0.00		
LEGAL DEFENSE & DEFENDER FUND								
CORE	001							
LEGAL DEFENSE AND DEFENDER			2,980,263	2.00	0	0.00	0	0.00
TOTAL			2,980,263	2.00	0	0.00		
EXTRAORDINARY EXPENSE/CONFLIC								
CORE	001							
GENERAL REVENUE			2,558,059	0.00	0	0.00	0	0.00
TOTAL			2,558,059	0.00	0	0.00		
DEBT OFFSET ESCROW FUND								
CORE	001							
DEBT OFFSET ESCROW			350,000	0.00	0	0.00	0	0.00
TOTAL			350,000	0.00	0	0.00		
OFFICE OF THE DIRECTOR								
Caseload Crisis Staff & PC - 1151001	002							
GENERAL REVENUE			5,564,661	43.00	0	0.00	0	0.00
TOTAL			5,564,661	43.00	0	0.00		
Caseload Crisis - Overload PC - 1151002	002							
GENERAL REVENUE			13,052,625	0.00	0	0.00	0	0.00
TOTAL			13,052,625	0.00	0	0.00		
Social Workers - 1151003	003							
GENERAL REVENUE			2,005,692	46.00	0	0.00	0	0.00
TOTAL			2,005,692	46.00	0	0.00		
Specialized Attorneys - 1151004	004							

State Public Defender

DECISION ITEM RANKING

Budgeting Unit		FY 2013	FY 2013	*****	*****		
Decision Item	Rank	DEPT REQ	DEPT REQ	SECURED	SECURED	CUMULATIVE TOTAL	
Fund		DOLLAR	FTE	COLUMN	COLUMN	DOLLARS	FTE
OFFICE OF THE DIRECTOR							
Specialized Attorneys - 1151004	004						
GENERAL REVENUE		948,108	12.00	0	0.00	0	0.00
TOTAL		948,108	12.00	0	0.00		
Current Staff Adj - 1151005	005						
GENERAL REVENUE		2,437,334	63.00	0	0.00	0	0.00
TOTAL		2,437,334	63.00	0	0.00		
Office Space Requirements - 1151006	006						
GENERAL REVENUE		2,151,511	0.00	0	0.00	0	0.00
TOTAL		2,151,511	0.00	0	0.00		
GRAND TOTAL		\$64,322,294	751.13	\$0	0.00		

State Public Defender

DECISION ITEM SUMMARY

Budget Unit									
Decision Item	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****	
Budget Object Summary	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED	
Fund	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN	
OFFICE OF THE DIRECTOR									
CORE									
PERSONAL SERVICES									
GENERAL REVENUE	26,943,206	570.00	27,729,933	585.13	27,729,933	585.13	0	0.00	
TOTAL - PS	26,943,206	570.00	27,729,933	585.13	27,729,933	585.13	0	0.00	
EXPENSE & EQUIPMENT									
GENERAL REVENUE	4,665,828	0.00	4,419,108	0.00	4,419,108	0.00	0	0.00	
TOTAL - EE	4,665,828	0.00	4,419,108	0.00	4,419,108	0.00	0	0.00	
TOTAL	31,609,034	570.00	32,149,041	585.13	32,149,041	585.13	0	0.00	
Caseload Crisis Staff & PC - 1151001									
PERSONAL SERVICES									
GENERAL REVENUE	0	0.00	0	0.00	1,670,976	43.00	0	0.00	
TOTAL - PS	0	0.00	0	0.00	1,670,976	43.00	0	0.00	
EXPENSE & EQUIPMENT									
GENERAL REVENUE	0	0.00	0	0.00	3,893,685	0.00	0	0.00	
TOTAL - EE	0	0.00	0	0.00	3,893,685	0.00	0	0.00	
TOTAL	0	0.00	0	0.00	5,564,661	43.00	0	0.00	
Caseload Crisis - Overload PC - 1151002									
EXPENSE & EQUIPMENT									
GENERAL REVENUE	0	0.00	0	0.00	13,052,625	0.00	0	0.00	
TOTAL - EE	0	0.00	0	0.00	13,052,625	0.00	0	0.00	
TOTAL	0	0.00	0	0.00	13,052,625	0.00	0	0.00	
Social Workers - 1151003									
PERSONAL SERVICES									
GENERAL REVENUE	0	0.00	0	0.00	1,653,792	46.00	0	0.00	
TOTAL - PS	0	0.00	0	0.00	1,653,792	46.00	0	0.00	
EXPENSE & EQUIPMENT									
GENERAL REVENUE	0	0.00	0	0.00	351,900	0.00	0	0.00	
TOTAL - EE	0	0.00	0	0.00	351,900	0.00	0	0.00	
TOTAL	0	0.00	0	0.00	2,005,692	46.00	0	0.00	

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State Public Defender

DECISION ITEM SUMMARY

Budget Unit								
Decision Item	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Budget Object Summary	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Fund	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
OFFICE OF THE DIRECTOR								
Specialized Attorneys - 1151004								
PERSONAL SERVICES								
GENERAL REVENUE	0	0.00	0	0.00	795,888	12.00	0	0.00
TOTAL - PS	0	0.00	0	0.00	795,888	12.00	0	0.00
EXPENSE & EQUIPMENT								
GENERAL REVENUE	0	0.00	0	0.00	152,220	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	152,220	0.00	0	0.00
TOTAL	0	0.00	0	0.00	948,108	12.00	0	0.00
Current Staff Adj - 1151005								
PERSONAL SERVICES								
GENERAL REVENUE	0	0.00	0	0.00	1,774,104	63.00	0	0.00
TOTAL - PS	0	0.00	0	0.00	1,774,104	63.00	0	0.00
EXPENSE & EQUIPMENT								
GENERAL REVENUE	0	0.00	0	0.00	663,230	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	663,230	0.00	0	0.00
TOTAL	0	0.00	0	0.00	2,437,334	63.00	0	0.00
Office Space Requirements - 1151006								
EXPENSE & EQUIPMENT								
GENERAL REVENUE	0	0.00	0	0.00	2,151,511	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	2,151,511	0.00	0	0.00
TOTAL	0	0.00	0	0.00	2,151,511	0.00	0	0.00
GRAND TOTAL	\$31,609,034	570.00	\$32,149,041	585.13	\$58,308,972	749.13	\$0	0.00

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CORE DECISION ITEM

Department	State Public Defender	Budget Unit	115151C
Division	Public Defender		
Core -	Legal Services Core Request		

1. CORE FINANCIAL SUMMARY

	FY 2013 Budget Request			
	GR	Federal	Other	Total
PS	27,729,933	0	0	27,729,933
EE	4,419,108	0	0	4,419,108
PSD	0	0	0	0
TRF	0	0	0	0
Total	32,149,041	0	0	32,149,041

FTE **585.13** **0.00** **0.00** **585.13**

Est. Fringe	15,470,530	0	0	15,470,530
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

	FY 2013 Governor's Recommendation			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	0	0
TRF	0	0	0	0
Total	0	0	0	0

FTE **0.00** **0.00** **0.00** **0.00**

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. CORE DESCRIPTION

The Missouri State Public Defender System [MSPD] is a statewide system, providing direct representation to over 98% of the indigent defendants accused of state crimes in Missouri's Trial, Appellate, and Supreme courts. It is an independent department of state government, located within, but not supervised by, the Judicial Branch. It is governed by a seven-member Public Defender Commission, appointed by the governor. This decision item includes funding for public defenders and their support staff throughout the state and central administrative staff.

CORE DECISION ITEM

Department	State Public Defender	Budget Unit	115151C
Division	Public Defender		
Core -	Legal Services Core Request		

3. PROGRAM LISTING (list programs included in this core funding)

The Public Defender Commission sets the indigency guidelines, which are used to determine who is eligible for public defender services. Currently, those guidelines match the Federal Poverty Guidelines. Strictly applied, that would mean an individual making only \$11,000 a year would not qualify for a public defender. According to recent reports, Missouri ranks 50th out of 50 states in income eligibility standards for public defender services, leaving a wide gap of ineligible defendants who in reality still lack the means to retain private counsel in the market. The guidelines, however, do allow for the taking into consideration of all of the defendant's particular circumstances affecting his/her ability to hire counsel, so things such as the seriousness of the charge may impact that decision. Defendants have the right to appeal MSPD's denial of their application to the court for an independent review of their eligibility. If the court finds they are unable to afford private counsel, the court can overrule the public defender denial.

4. FINANCIAL HISTORY

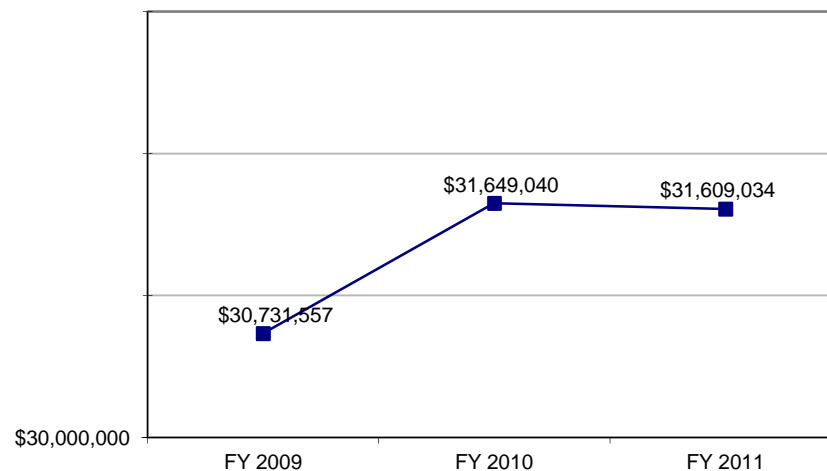
	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Current Yr.
Appropriation (All Funds)	30,678,313	31,649,041	32,149,041	32,149,041
Less Reverted (All Funds)	0	0	(250,000)	0
Budget Authority (All Funds)	30,678,313	31,649,041	31,899,041	32,149,041
Actual Expenditures (All Funds)	30,731,557	31,649,040	31,609,034	0
Unexpended (All Funds)	(53,244)	1	290,007	32,149,041
Unexpended, by Fund:				
General Revenue	0	0	0	0
Federal	0	0	0	0
Other	0	0	0	0

Full Flexibility - A net of \$290,000 was transferred from this appropriation to our Homicide/Conflict Appropriation to assist in contracting out case overload.

Reverted includes Governor's standard 3 percent reserve (when applicable) and any extraordinary expenditure restrictions.

NOTES:

Actual Expenditures (All Funds)



State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
OFFICE OF THE DIRECTOR								
CORE								
TEMPORARY EMPLOYEE	10,383	0.36	0	0.00	0	0.00	0	0.00
SECRETARY	2,846,622	110.37	3,071,481	119.75	3,052,198	119.75	0	0.00
COMPUTER INFO. SPECIALIST	317,303	6.25	268,824	5.25	320,652	6.25	0	0.00
INVESTIGATOR	2,050,289	59.42	2,082,281	60.13	2,089,555	60.13	0	0.00
PARALEGAL	211,495	6.73	204,932	6.50	205,014	6.50	0	0.00
MITIGATION SPECIALIST	267,345	7.00	267,345	7.00	267,672	7.00	0	0.00
LAW CLERK	29,937	0.83	0	0.00	0	0.00	0	0.00
ASSISTANT PUBLIC DEFENDER	16,980,222	320.71	17,443,454	325.50	17,443,588	326.50	0	0.00
DISTRICT DEFENDER	2,967,110	41.39	3,086,988	43.00	3,154,200	43.00	0	0.00
DIVISION DIRECTOR	626,478	6.00	631,752	6.00	613,668	6.00	0	0.00
PROGRAM TECHNICIAN	174,546	5.00	213,108	6.00	174,408	5.00	0	0.00
PROGRAM MANAGER	334,873	4.89	339,288	5.00	288,498	4.00	0	0.00
DIRECTOR	126,603	1.05	120,480	1.00	120,480	1.00	0	0.00
TOTAL - PS	26,943,206	570.00	27,729,933	585.13	27,729,933	585.13	0	0.00
TRAVEL, IN-STATE	803,082	0.00	978,900	0.00	805,000	0.00	0	0.00
TRAVEL, OUT-OF-STATE	2,447	0.00	3,500	0.00	2,500	0.00	0	0.00
FUEL & UTILITIES	55,084	0.00	50,000	0.00	55,000	0.00	0	0.00
SUPPLIES	348,400	0.00	315,000	0.00	350,000	0.00	0	0.00
PROFESSIONAL DEVELOPMENT	114,870	0.00	115,000	0.00	115,000	0.00	0	0.00
COMMUNICATION SERV & SUPP	131,595	0.00	150,000	0.00	160,000	0.00	0	0.00
PROFESSIONAL SERVICES	1,848,064	0.00	1,680,938	0.00	1,775,000	0.00	0	0.00
HOUSEKEEPING & JANITORIAL SERV	95,485	0.00	90,000	0.00	95,500	0.00	0	0.00
M&R SERVICES	164,010	0.00	280,000	0.00	175,000	0.00	0	0.00
COMPUTER EQUIPMENT	293,207	0.00	770	0.00	131,108	0.00	0	0.00
OFFICE EQUIPMENT	5,644	0.00	4,500	0.00	4,500	0.00	0	0.00
OTHER EQUIPMENT	23,948	0.00	500	0.00	500	0.00	0	0.00
BUILDING LEASE PAYMENTS	715,213	0.00	715,000	0.00	715,000	0.00	0	0.00
EQUIPMENT RENTALS & LEASES	9,595	0.00	10,000	0.00	10,000	0.00	0	0.00

State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
OFFICE OF THE DIRECTOR								
CORE								
MISCELLANEOUS EXPENSES	55,184	0.00	25,000	0.00	25,000	0.00	0	0.00
TOTAL - EE	4,665,828	0.00	4,419,108	0.00	4,419,108	0.00	0	0.00
GRAND TOTAL	\$31,609,034	570.00	\$32,149,041	585.13	\$32,149,041	585.13	\$0	0.00
GENERAL REVENUE	\$31,609,034	570.00	\$32,149,041	585.13	\$32,149,041	585.13		0.00
FEDERAL FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00
OTHER FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00

FLEXIBILITY REQUEST FORM

BUDGET UNIT NUMBER: 1151000	DEPARTMENT: Office of the State Public Defender
BUDGET UNIT NAME: Public Defender Legal Services	DIVISION: Legal Services
1. Provide the amount by fund of personal service flexibility and the amount by fund of expense and equipment flexibility you are requesting in dollar and percentage terms and explain why the flexibility is needed. If flexibility is being requested among divisions, provide the amount by fund of flexibility you are requesting in dollar and percentage terms and explain why the flexibility is needed.	
DEPARTMENT REQUEST	
<p>The Office of the State Public Defender is requesting full flexibility in our legal services appropriations. (Appropriations 0911, 0912 and 8727). Due to the turnover of attorney positions, the number of conflicts and the overload of cases, it is frequently necessary to transfer cases from state employees (Appropriation 0911) to private counsel who can be compensated from appropriation 0912 or 8727.</p> <p>It is also necessary to transfer dollars from the Personal Service Appropriation to the Expense and Equipment Appropriation to cover routine office expenses such as travel, postage and equipment maintenance.</p>	
2. Estimate how much flexibility will be used for the budget year. How much flexibility was used in the Prior Year Budget and the Current Year Budget? Please specify the amount.	
PRIOR YEAR ACTUAL AMOUNT OF FLEXIBILITY USED	CURRENT YEAR ESTIMATED AMOUNT OF FLEXIBILITY THAT WILL BE USED
\$296,847	\$375,000
3. Please explain how flexibility was used in the prior and/or current years.	
PRIOR YEAR EXPLAIN ACTUAL USE	CURRENT YEAR EXPLAIN PLANNED USE
<p>\$300,000 was transferred from Personal Service (0911) to E&E (0912) to cover general office operating costs and the purchase of computer equipment. A net of \$290,000 was transferred to the Homicide/Conflict Appropriation (8727) to assist with caseload relief by contracting out more cases to private counsel.</p>	<p>Flexibility will be utilized to best meet the caseload demands of the State Public Defender System. Dollars from Personal Service could be used to meet the cost of operating the local offices or to contract out cases to the private bar as the need arises.</p>

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NEW DECISION ITEM
RANK: 1 **OF** 5

Department <u>State Public Defender</u>					Budget Unit <u>15111C</u>				
Division <u>Public Defender</u>					Conflicts by Private Counsel - Overload by Public Defender Staff				
DI Name <u>Caseload Crisis - Option 1 -</u>					DI# <u>1151001</u>				
1. AMOUNT OF REQUEST									
FY 2013 Budget Request					FY 2013 Governor's Recommendation				
	GR	Federal	Other	Total		GR	Federal	Other	Total
PS	1,670,976	0	0	1,670,976	PS	0	0	0	0
EE	3,893,685	0	0	3,893,685	EE	0	0	0	0
PSD	0	0	0	0	PSD	0	0	0	0
TRF	0	0	0	0	TRF	0	0	0	0
Total	<u>5,564,661</u>	<u>0</u>	<u>0</u>	<u>5,564,661</u>	Total	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
FTE	43.00	0.00	0.00	43.00	FTE	0.00	0.00	0.00	0.00
Est. Fringe	<u>932,238</u>	<u>0</u>	<u>0</u>	<u>932,238</u>	Est. Fringe	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.</i>					<i>Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.</i>				
Other Funds:					Other Funds:				
2. THIS REQUEST CAN BE CATEGORIZED AS:									
<input type="checkbox"/> New Legislation <input type="checkbox"/> Federal Mandate <input type="checkbox"/> GR Pick-Up <input type="checkbox"/> Pay Plan					<input type="checkbox"/> New Program <input type="checkbox"/> Program Expansion <input type="checkbox"/> Space Request <input checked="" type="checkbox"/> Other: <u>CONSTITUTIONALLY MANDATED</u>				
<input type="checkbox"/> Fund Switch <input type="checkbox"/> Cost to Continue <input type="checkbox"/> Equipment Replacement									
3. WHY IS THIS FUNDING NEEDED? PROVIDE AN EXPLANATION FOR ITEMS CHECKED IN #2. INCLUDE THE FEDERAL OR STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS PROGRAM.									
<p>As set out in the Program Description, the state is obligated under both the U.S. Constitution Amendment VI and the Missouri Constitution, Article I, Section 18A to provide criminal defense lawyers for the indigent defendants. Chapter 600 RSMo assigns that responsibility to the Missouri State Public Defender System.</p> <p>In the last five years, four separate studies have been done of the Missouri State Public Defender System and all have reached the same conclusion: Missouri's Public Defender System "is operating in crisis mode" and "the probability that public defenders are failing to provide effective assistance of counsel and are violating their ethical obligations to their clients increases every day." The last three Chief Justices have warned of this crisis in their State of the Judiciary speeches to the legislature and the U.S. Attorney General, Eric Holder, specifically named Missouri in a speech given in New York last year as an example of a broken indigent defense system.</p>									

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender	Conflicts by Private Counsel - Overload by Public Defender Staff	
DI Name	Caseload Crisis - Option 1 -	DI#	1151001

When there are not sufficient resources to adequately staff the public defender system to handle all the eligible cases, public defenders have no choice but to limit the cases they accept. Anything else forces them to violate their ethical and professional responsibilities, exposing them to malpractice liability and professional discipline against their licenses to practice law.

4. DESCRIBE THE DETAILED ASSUMPTIONS USED TO DERIVE THE SPECIFIC REQUESTED AMOUNT. (How did you determine that the requested number of FTE were appropriate? From what source or standard did you derive the requested levels of funding? Were alternatives such as outsourcing or automation considered? If based on new legislation, does request tie to TAFP fiscal note? If not, explain why. Detail which portions of the request are one-times and how those amounts were calculated.)

This option presumes that (1) all conflict cases are contracted out to the private bar rather than sent to another nearby public defender office; (2) current contract fee amounts to private counsel remain flat; (3) caseload, and the percentage of cases that present conflicts, remain relatively flat; and (4) the personnel increases needed to handle the remaining caseload are phased-in over a three year period.

Contracting Conflict Cases Cost:	\$3.4 million
FY13 Personnel Costs using 3 year phase-in:	<u>\$2.1 million</u>
Total FY13 Decision Item Cost:	\$5.5 million

Contracting All Conflict Cases: Crime is increasingly a social activity, with multiple defendants facing companion charges and pointing fingers at one another. In those circumstances, the local defender office can only represent one of the codefendants in a given case. The others must go elsewhere, either to another defender office or out to private counsel on a contract for representation. Historically, MSPD has sent the first co-defendant to another defender office and has only contracted second, third, (or more) co-defendants out to private counsel. However, this handling of conflict cases in-house is not a cost-effective approach. These cases pull lawyers out of their primary jurisdictions and require them to drive significant distances to other counties to appear for court, conduct investigations, witness interviews and depositions, visit their clients in that county jail, etc. It is not uncommon for each trip to eat up close to a day of the attorney's time to deal with one or two cases. In the long run, it is much more cost-effective and more efficient to contract all conflict cases out to attorneys in the private bar and allow the local offices to concentrate on effectively representing the cases that arise within the counties they are designed to serve.

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender	Conflicts by Private Counsel - Overload by Public Defender Staff	
DI Name	Caseload Crisis - Option 1 -	DI#	1151001

At present, MSPD uses the case severity flat fee schedule at the right for cases contracted out to private counsel. Litigation expenses (the cost of transcripts, investigation, experts, or depositions) are not included in these fees but are approved on a case-by-case basis. These costs would be incurred by MSPD whether the case was being handled internally or by private counsel.

MSPD pays an additional fee for cases resolved by trial: Jury Trial \$1,500 for the first day and \$750 for each additional day, partial days are prorated. Bench Trial: \$750 per day prorated.

Missouri State Public Defender Private Counsel Fee Schedule		
Case Type	Description	Contract Rates
15	Murder 1st Degree	\$10,000
20	Other Homicide	\$6,000
30D	AB Felony Drug	\$750
30F	AB Felony Other	\$1,500
30X	AB Felony Sex	\$2,000
35D	CD Felony Drug	\$750
35F	CD Felony Other	\$750
35X	CD Felony Sex	\$1,500
45M	Misdemeanor	\$375
45T	Misdemeanor - Traffic	\$375
50N	Juvenile - Non Violent	\$500
50S	Juvenile - Status	\$500
50V	Juvenile - Violent	\$750
65F	Probation Violation - Felony	\$375
65M	Probation Violation - Misd	\$375
110F	Direct Appeals - Felony	\$3,750
110S	Direct Appeal - Misdemeanor	\$500
124A	Rule 24.035 Appeal	\$500
124M	Rule 24.035 Motion	\$500
129A	Rule 29.15 Appeal	\$3,750
129M	Rule 29.15 Motion	\$500

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender
Division	Public Defender
DI Name	Caseload Crisis - Option 1 -
	DI# 1151001

Budget Unit 15111C

Conflicts by Private Counsel - Overload by Public Defender Staff

Given the assumptions set out, the cost of contracting out all conflict cases to private counsel would run a little under \$4.7 million. Since we already spend just over \$1.2 million contracting out some of these cases (those with multiple co-defendants), the new money needed to move all conflict cases out of the public defender system to contract counsel would be \$3.45 million, as shown to the right:

FY2011 ASSIGNED CASES - Trial & Appellate Division Assigned & Contract Counsel Does Not include Capital or CDU					
Case Type	Description	Conflicts Currently Handled by MSPD 41's	Conflicts Currently Contracted to Private Counsel 42's	Contract Rates	Cost of Contracts
15	Murder 1st Degree	14	6	\$10,000	\$200,000
20	Other Homicide	18	7	\$6,000	\$150,000
30D	AB Felony Drug	407	207	\$750	\$460,500
30F	AB Felony Other	456	112	\$1,500	\$852,000
30X	AB Felony Sex	27	10	\$2,000	\$74,000
35D	CD Felony Drug	461	157	\$750	\$463,500
35F	CD Felony Other	1,490	506	\$750	\$1,497,000
35X	CD Felony Sex	9	5	\$1,500	\$21,000
45M	Misdemeanor	717	258	\$375	\$365,625
45T	Misdemeanor - Traffic	121	37	\$375	\$59,250
50N	Juvenile - Non Violent	89	23	\$500	\$56,000
50S	Juvenile - Status	3		\$500	\$1,500
50V	Juvenile - Violent	41	14	\$750	\$41,250
65F	Probation Violation - Felony	303	115	\$375	\$156,750
65M	Probation Violation - Misd	71	46	\$375	\$43,875
110F	Direct Appeals - Felony	8	25	\$3,750	\$123,750
110S	Direct Appeal - Misdemeanor		2	\$500	\$1,000
124A	Rule 24.035 Appeal	6	1	\$500	\$3,500
124M	Rule 24.035 Motion	8	108	\$500	\$58,000
129A	Rule 29.15 Appeal	2	6	\$3,750	\$30,000
129M	Rule 29.15 Motion	6	30	\$500	\$18,000
	Totals	4,257	1,675		\$4,676,500
		Fiscal Year 2012 Contract Budget			<u>\$1,225,000</u>
Additional Appropriation Required to Contract Out All Conflicts - First and Second Levels					\$3,451,500
ALL TRIAL & APPELLATE CONFLICTS (41'S AND 42'S) TO PRIVATE COUNSEL					

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender	Conflicts by Private Counsel - Overload by Public Defender Staff	
DI Name	Caseload Crisis - Option 1 -	DI#	1151001

Attorney Staff Needed to Handle Remaining Caseload: Removing all conflict cases would help to reduce the public defender case overload, but it does not eliminate it. Assuming no increase in caseload, we would still be 66 lawyers short of what is necessary to avoid having to turn cases away. This number is determined by applying the Public Defender Commission's Maximum Allowable Workload Protocol formula (set out under the 'Effectiveness Measure' section of the Program Description of this budget book) to the caseload that would remain after the conflicts have all been pulled out and contracted to private attorneys.

Support Staff: Every law practice management expert will tell you that lawyer time needs to be leveraged by utilizing support staff for everything that can be done by a non-lawyer and freeing up the lawyer to do those things that only a lawyer can do. Some of those tasks are best done by a legal assistant or a paralegal, others by a clerk, and still others by an investigator. The goal is always to preserve the more expensive lawyer's time for those things that require a law license and utilize the less-expensive support staff personnel for everything else. For this reason, in most private law firms you will find significantly more support staff in a law office than attorneys. According to a survey conducted by the Office of Missouri Prosecution Services, Missouri's prosecuting attorney's offices, average 1-2 support staff for every attorney, excluding any investigative staff. For purposes of this new decision item, we are requesting – one clerical person, one legal assistant, and one investigator for every three new attorneys. That would mean 22 investigators, 22 legal assistants, and 22 clerical personnel to accompany the 66 additional attorneys necessary to handle the remaining caseload after all conflict cases have been contracted out of the system.

Three-year Phase-in = \$2.1 Million in FY13: In recognition of the current economic state, as well as the logistical challenges involved in both hiring and finding facilities to accommodate such a large staffing increase, this budget proposes a three-year phase-in of the staffing increase associated with this option. This reduces the cost of the personnel portion of this decision item from a total of \$6.5 million down to just \$2.1 million for FY13 as illustrated in the cost breakdown table.

Fiscal Year 2011 Trial & Appellate Option I - Assign All Conflicts to Private Counsel MSPD to Retain all Overload Cases Does Not include Capital or CDU						
Case Type		FY11 Trial & Appellate Division Cases	Adjusted for FY11 Withdrawn & Contracted Conflicts	Total Trial & Appellate Adjusted Caseload	Hours Required for Case Type	FY11 NAC Modified Required Hours
15	Murder 1st Degree	134	(58)	76	173	13,148
20	Other Homicide	132	(66)	66	173	11,418
30D	AB Felony Drug	3,064	(1,436)	1,628	14	22,792
30F	AB Felony Other	3,776	(1,522)	2,254	14	31,556
30X	AB Felony Sex	665	(171)	494	31	15,314
35D	CD Felony Drug	5,512	(1,645)	3,867	14	54,138
35F	CD Felony Other	21,065	(5,402)	15,663	14	219,282
35X	CD Felony Sex	327	(64)	263	31	8,153
45M	Misdemeanor	16,455	(2,520)	13,935	5	69,675
45T	Misdemeanor - Traffic	5,980	(628)	5,352	5	26,760
50N	Juvenile - Non Violent	1,144	(249)	895	10	8,950
50S	Juvenile - Status	127	(10)	117	10	1,170
50V	Juvenile - Violent	583	(129)	454	10	4,540
60	552 Release Petitions	27	(5)	22	14	308
65F	Probation Violation - Felony	14,725	(1,451)	13,274	5	66,370
65M	Probation Violation - Misd	5,171	(410)	4,761	5	23,805
75	Special Writ	1		1	83	83
110F	Direct Appeals - Felony	399	(63)	336	83	27,888
110I	Direct Appeal - Interlocutory	6		6	83	498
110J	Direct Appeal - Juvenile	3		3	83	249
110S	Direct Appeal - Misdemeanor	25	(6)	19	83	1,577
124A	Rule 24.035 Appeal	241	(18)	223	21	4,683
124M	Rule 24.035 Motion	649	(148)	501	21	10,521
129A	Rule 29.15 Appeal	194	(13)	181	62	11,222
129M	Rule 29.15 Motion	295	(55)	240	62	14,880
150T	Trial Level Resentencing	2		2	21	42
	Totals	80,702	(16,069)	64,633		
				Case Hours		649,022
2340.00	Standard Work Hours (45 hrs. *52 wks)			Travel Hours		33,650
-65.80	Attorney Sick Leave			Management Hours		37,908
-216.00	Holidays and Annual Leave			Total Workload Hours		720,580
-320.50	Non Case Related Hours (13.7%)					
1737.70	Available Attorney Case Hours	Attorneys Needed Determined by Protocol				415
		Current Trial and Appellate Attorneys				349
ALL CONFLICTS TO PRIVATE COUNSEL				Need		66

Protocol Trial and Appellate Divisions Assuming All Conflicts to Private Counsel		
	Protocol	
COST BREAKDOWN	Protocol	3 YEAR PHASE-IN FY2013 NEW DECISION ITEM
Personal Service		
Assistant Public Defender III - Range 30 \$49,104	66.00 \$3,240,864	22.00 \$1,080,288
Investigators - Range 23 \$34,644	22.00 \$762,168	7.00 \$242,508
Legal Assistants - Range 15 \$25,944	22.00 \$570,768	7.00 \$181,608
Secretaries - Range 12 \$23,796	22.00 <u>\$523,512</u>	7.00 <u>\$166,572</u>
	132.00	43.00
Total Personal Service	\$5,097,312	\$1,670,976
Expense & Equipment		
One-time Purchases		
Attorney Package \$2,950	66.00 \$194,700	22.00 \$64,900
Investigator Package \$2,875	22.00 \$63,250	7.00 \$20,125
Legal Assistant Package \$2,875	22.00 \$63,250	7.00 \$20,125
Secretary Package \$9,105	22.00 <u>\$200,310</u>	7.00 <u>\$63,735</u>
Total One-Time Purchases	\$521,510	\$168,885
On-Going Costs		
Attorneys \$6,600	66.00 \$435,600	22.00 \$145,200
Investigator \$9,275	22.00 \$204,050	7.00 \$64,925
Legal Assistant \$4,775	22.00 \$105,050	7.00 \$33,425
Secretary \$4,250	22.00 <u>\$93,500</u>	7.00 <u>\$29,750</u>
Total Personnel Related On-Going Costs	\$838,200	\$273,300
Total Expense and Equipment	\$1,359,710	\$442,185
Total Decision Item Request	\$6,457,022	\$2,113,161

One Time Equipment Purchase

Attorney

Desk	\$540
Chair	\$175
Side Chair (2)	\$250
Bookcase	\$215
Portable Dictation Unit	\$105
File Cabinet (2)	\$225
Telephone	\$275
Personal Computer (laptop)	\$950
PC Software	<u>\$215</u>
	\$2,950

Investigator/Legal Assistant

Desk	\$540
Chair	\$175
Side Chair (2)	\$250
Camera	\$190
Portable Dictation Unit	\$105
File Cabinet (2)	\$225
Telephone	\$225
Personal Computer (laptop)	\$950
PC Software	<u>\$215</u>
	\$2,875

Secretary

Desk	\$540
Chair	\$175
Side Chair (1)	\$125
File Cabinet (2)	\$225
Telephone	\$325
Personal Computer (desktop)	\$950
PC Software	\$215
Printer/Copier/Fax	<u>\$6,550</u>
For Every 5 Employees	\$9,105

Detail for Projections

On-Going Costs - Trial & Appellate Divisons

Attorney

Travel @ \$250 per month	\$3,000
Office	\$500
Rent	\$1,900
Phone & Network Communications	<u>\$1,200</u>
	\$6,600

Investigator

Travel @ \$500 per month	\$6,000
Office	\$175
Rent	\$1,900
Phone & Network Communications	<u>\$1,200</u>
	\$9,275

Legal Assistant

Travel @ \$125 per month	\$1,500
Office	\$175
Rent	\$1,900
Phone & Network Communications	<u>\$1,200</u>
	\$4,775

Secretary

Office	\$1,150
Rent	\$1,900
Phone & Network Communications	<u>\$1,200</u>
	\$4,250

Staffing Ratios:

Requirements

Investigators	1 : 3.0 Attorneys
Secretaries	1 : 3.0 Attorneys
Legal Assistants	1 : 3.0 Attorneys

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender			Budget Unit 15111C					
Division	Public Defender			Conflicts by Private Counsel - Overload by Public Defender Staff					
DI Name	Caseload Crisis - Option 1 -			DI# 1151001					
5. BREAK DOWN THE REQUEST BY BUDGET OBJECT CLASS, JOB CLASS, AND FUND SOURCE. IDENTIFY ONE-TIME COSTS.									
	Dept Req GR	Dept Req GR	Dept Req FED	Dept Req FED	Dept Req OTHER	Dept Req OTHER	Dept Req TOTAL	Dept Req TOTAL	Dept Req One-Time
Budget Object Class/Job Class	DOLLARS	FTE	DOLLARS	FTE	DOLLARS	FTE	DOLLARS	FTE	DOLLARS
Assistant Public Defender	1,080,288	22.0					1,080,288	22.0	
Investigator	242,508	7.0					242,508	7.0	
Legal Assistant	181,608	7.0					181,608	7.0	
Secretary	166,572	7.0					166,572	7.0	
Total PS	1,670,976	43.0	0	0.0	0	0.0	1,670,976	43.0	0
Travel - 140	118,500						118,500		
Suupplies - 190	21,500						21,500		
Communications - 340	51,600						51,600		
Building Lease Payments - 680	81,700						81,700		
Professional Services - 400	3,451,500						3,451,500		
Computer Equipment - 480	95,945						95,945		
Office Equipment - 590	15,255						15,255		
Other Equipment - 580	57,685						57,685		
Total EE	3,893,685		0		0		3,893,685		0
Program Distributions							0		
Total PSD	0		0		0		0		0
Transfers									
Total TRF	0		0		0		0		0
Grand Total	5,564,661	43.0	0	0.0	0	0.0	5,564,661	43.0	0

State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
OFFICE OF THE DIRECTOR								
Caseload Crisis Staff & PC - 1151001								
SECRETARY	0	0.00	0	0.00	348,180	14.00	0	0.00
INVESTIGATOR	0	0.00	0	0.00	242,508	7.00	0	0.00
ASSISTANT PUBLIC DEFENDER	0	0.00	0	0.00	1,080,288	22.00	0	0.00
TOTAL - PS	0	0.00	0	0.00	1,670,976	43.00	0	0.00
TRAVEL, IN-STATE	0	0.00	0	0.00	118,500	0.00	0	0.00
SUPPLIES	0	0.00	0	0.00	21,500	0.00	0	0.00
COMMUNICATION SERV & SUPP	0	0.00	0	0.00	51,600	0.00	0	0.00
PROFESSIONAL SERVICES	0	0.00	0	0.00	3,451,500	0.00	0	0.00
COMPUTER EQUIPMENT	0	0.00	0	0.00	95,945	0.00	0	0.00
OFFICE EQUIPMENT	0	0.00	0	0.00	57,685	0.00	0	0.00
OTHER EQUIPMENT	0	0.00	0	0.00	15,255	0.00	0	0.00
BUILDING LEASE PAYMENTS	0	0.00	0	0.00	81,700	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	3,893,685	0.00	0	0.00
GRAND TOTAL	\$0	0.00	\$0	0.00	\$5,564,661	43.00	\$0	0.00
GENERAL REVENUE	\$0	0.00	\$0	0.00	\$5,564,661	43.00		0.00
FEDERAL FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00
OTHER FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender	Conflicts and Overload by Private Counsel	
DI Name	Caseload Crisis - Option 2	DI#	1151002

1. AMOUNT OF REQUEST

	FY 2013 Budget Request			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	13,052,625	0	0	13,052,625
PSD	0	0	0	0
TRF	0	0	0	0
Total	13,052,625	0	0	13,052,625
FTE	0.00	0.00	0.00	0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

	FY 2013 Governor's Recommendation			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	0	0
TRF	0	0	0	0
Total	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. THIS REQUEST CAN BE CATEGORIZED AS:

<input type="checkbox"/> New Legislation	<input type="checkbox"/> New Program	<input type="checkbox"/> Fund Switch
<input type="checkbox"/> Federal Mandate	<input type="checkbox"/> Program Expansion	<input type="checkbox"/> Cost to Continue
<input type="checkbox"/> GR Pick-Up	<input type="checkbox"/> Space Request	<input type="checkbox"/> Equipment Replacement
<input type="checkbox"/> Pay Plan	<input checked="" type="checkbox"/> Other: CONSTITUTIONALLY MANDATED	

3. WHY IS THIS FUNDING NEEDED? PROVIDE AN EXPLANATION FOR ITEMS CHECKED IN #2. INCLUDE THE FEDERAL OR STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS PROGRAM.

As set out in the Program Description, the state is obligated under both the U.S. Constitution Amendment VI and the Missouri Constitution, Article I, Section 18A to provide criminal defense lawyers for the indigent defendants. Chapter 600 RSMo assigns that responsibility to the Missouri State Public Defender System.

In the last five years, four separate studies have been done of the Missouri State Public Defender System and all have reached the same conclusion: Missouri's Public Defender System "is operating in crisis mode" and "the probability that public defenders are failing to provide effective assistance of counsel and are violating their ethical obligations to their clients increases every day." The last three Chief Justices have warned of this crisis in their State of the Judiciary speeches to the legislature and the U.S. Attorney General, Eric Holder, specifically named Missouri in a speech given in New York last year as an example of a broken indigent defense system.

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender	Conflicts and Overload by Private Counsel	
DI Name	Caseload Crisis - Option 2	DI#	1151002

When there are not sufficient resources to adequately staff the public defender system to handle all the eligible cases, public defenders have no choice but to limit the cases they accept. Anything else forces them to violate their ethical and professional responsibilities, exposing them to malpractice liability and professional discipline against their licenses to practice law.

4. DESCRIBE THE DETAILED ASSUMPTIONS USED TO DERIVE THE SPECIFIC REQUESTED AMOUNT. (How did you determine that the requested number of FTE were appropriate? From what source or standard did you derive the requested levels of funding? Were alternatives such as outsourcing or automation considered? If based on new legislation, does request tie to TAFP fiscal note? If not, explain why. Detail which portions of the request are one-times and how those amounts were calculated.)

This option presumes that (1) Missouri's public defender system current attorney staffing, caseload, and contract fee schedule all remain unchanged, (2) that MSPD continues its current practice of contracting out second, third, and subsequent co-defendant cases to private counsel, and (3) that MSPD *also* contracts out the remainder of its excess caseload to private counsel.

Cost to contract MSPD's excess caseload: ***\$13,052,625***

The Missouri Public Defender Commission has established a Maximum Allowable Workload for each public defender office using a protocol built from national caseload standards and utilizing factors recommended by the American Bar Association. It is designed to strike a balance between the number of hours needed to *effectively* and *constitutionally* handle the cases coming in the door of a defender office and the number of attorney hours available within that office to handle those cases. The protocol is explained under the "Effectiveness Measure" section of the Program Description.

Applying the Maximum Allowable Workload protocol to MSPD's most recent caseload numbers shows that we are currently staffed to effectively handle just 73% of the cases in need of public defenders in Missouri's justice system. If MSPD's attorney staffing is to remain unchanged, as is assumed under this option, then 27% of its caseload would need to be contracted out to private counsel, as compared to the not quite 2% of its caseload that it is currently contracted out to private counsel.

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender	Conflicts and Overload by Private Counsel	
DI Name	Caseload Crisis - Option 2	DI#	1151002

As shown in the following chart, the total NAC Modified Case Hours for Fiscal Year 2011 was

Hours Needed for Current Caseload			729,788.00 *	100.00%
Available Hours Per Attorney Per Year to Handle Cases		1737.70		
Number of Trial & Appellate Attorneys		348.50		
Total Attorney Hours Available to Handle Cases		605,588.45		
Less Travel Hours Not Available for Case Work				
Trial Division				
1,460,122 Miles /45 Miles Per Hour	(32,447.24)			
Appellate Division				
54,142 Miles / 45 Miles Per Hour	(1,203.16)			
Total Travel Hours		(33,650.40)		
Less Management Hours Not Available for Case Work				
Trial Division Staff				
279 Attorneys + 158 Staff * 1.5 Hours Per Week	(34,086.00)			
* 52 Weeks				
Appellate Division Staff				
30.5 Attorneys + 18.5 Staff * 1.5 Hours Per Week	(3,822.00)			
* 52 Weeks				
Total Management Hours		(37,908.00)		
Remaining Attorney Hours Available for Case Work			534,030.05	73.18%
Case Hours That Must be Contracted			195,757.95	26.82%

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender
Division	Public Defender
DI Name	Caseload Crisis - Option 2
	DI# 1151002

Budget Unit 15111C
Conflicts and Overload by Private Counsel

At present, MSPD uses the case severity flat fee schedule at the right for cases contracted out to private counsel. Litigation expenses (the cost of transcripts, investigation, experts, or depositions) are not included in these fees but are approved on a case-by-case basis. These costs would be incurred by MSPD whether the case was being handled internally or by private counsel.

MSPD pays an additional fee for cases resolved by trial: Jury Trial \$1,500 for the first day and \$750 for each additional day, partial days are prorated. Bench Trial: \$750 per day prorated

Missouri State Public Defender Private Counsel Fee Schedule		
Case Type	Description	Contract Rates
15	Murder 1st Degree	\$10,000
20	Other Homicide	\$6,000
30D	AB Felony Drug	\$750
30F	AB Felony Other	\$1,500
30X	AB Felony Sex	\$2,000
35D	CD Felony Drug	\$750
35F	CD Felony Other	\$750
35X	CD Felony Sex	\$1,500
45M	Misdemeanor	\$375
45T	Misdemeanor - Traffic	\$375
50N	Juvenile - Non Violent	\$500
50S	Juvenile - Status	\$500
50V	Juvenile - Violent	\$750
65F	Probation Violation - Felony	\$375
65M	Probation Violation - Misd	\$375
110F	Direct Appeals - Felony	\$3,750
110S	Direct Appeal - Misdemeanor	\$500
124A	Rule 24.035 Appeal	\$500
124M	Rule 24.035 Motion	\$500
129A	Rule 29.15 Appeal	\$3,750
129M	Rule 29.15 Motion	\$500

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender	Conflicts and Overload by Private Counsel	
DI Name	Caseload Crisis - Option 2	DI#	1151002
<p>The chart on the next page applies the 27% overload to MSPD’s current (FY11) caseload as a means of estimating the costs associated with this option of contracting out the MSPD case overload. Cases are contracted out beginning with the simplest, least expensive cases to contract first (e.g. traffic, misdemeanor, juvenile status offenses) and continuing on through increasingly complex cases until the 27% threshold is reached. As shown in the chart below, this results in an estimated cost increase in MSPD’s contracting cases of \$13,052,625.</p> <p>Two <i>caveats</i> to this approach are worth noting, however:</p> <p>First, this option depends on the availability and willingness of qualified private criminal defense attorneys to begin taking significant quantities of public defender cases at rates below what is usually charged in the market for similar cases. Our experience has been that many attorneys are willing to take a <i>few</i> cases at that rate, out of personal interest in gaining experience or out of a desire to help out what they know to be a struggling, seriously overloaded public defender system. There is a tipping point, however, where the time involved in doing too many such cases becomes prohibitively expensive given the low fees that accompany them. We do not know where that tipping point is, but need to be aware that once we reach it, this model is likely to cost significantly more than our initial estimates.</p> <p>Second, the use of flat fee schedules such as MSPD currently uses in contracting indigent defense cases is <i>widely</i> criticized by watchers of indigent defense around the country and has been the issue in a number of law suits claiming such low rates violate an indigent defendant’s Sixth Amendment right to counsel just as much as an overloaded public defender does. The criticism and litigation has focused on the pressure such a flat fee schedule places on a private counsel to move the case quickly for the least amount of time. The longer the case drags on and the more work that goes into it, the more money the attorney is actually <i>losing</i> on the case – providing an economic hardship to those who are conscientious and a strong <i>disincentive</i> to quality representation. MSPD does modify its flat fee schedule somewhat to permit a <i>per diem</i> increase for cases taken to jury trial, but most jurisdictions that rely on private counsel to provide a significant portion of the state’s indigent defense representation pay an hourly contract rate rather than a flat fee based on case type. Even the State of Missouri utilizes an hourly rate in lieu of flat fee in other areas of law involving the payment of outside counsel by the state. For example, Section 536.085(4) of the Revised Statutes of Missouri, sets \$75 per hour as the rate generally paid by the state for outside counsel in administrative and agency proceedings, “unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.” As a result, it would probably be best NOT to presume that a widespread increase in the numbers of cases to private counsel could be accomplished with no change in MSPD’s current flat fee schedule.</p>			

FY2011 ASSIGNED CASES - Trial & Appellate Division Caseload, Adjusted for Withdrawals, 2nd Level Conflicts and Contracted Cases Does Not include Capital or CDU Keeps Public Defender Staff Constant and Contracts out Overload Hours									
Case Type		FY11 Trial & Appellate Division Cases	Adjusted for FY11 Withdrawn	FY11 1st Level Conflicts 41 - Office Giving Up Conflict	Total Trial & Appellate Adjusted Caseload All Cases	Hours Required for Case Type Per Protocol	FY11 NAC Modified Required Hours	Contract Rates	Amount of \$'s Needed to Contract
45T	Misdemeanor - Traffic	5,980	(349)	(121)	5,510	5	27,550	\$375	\$2,066,250
50S	Juvenile - Status	127	(4)	(3)	120	10	1,200	\$500	\$60,000
50N	Juvenile - Non Violent	1,144	(48)	(89)	1,007	10	10,070	\$500	\$503,500
45M	Misdemeanor	16,455	(828)	(717)	14,910	5	74,550	\$375	\$5,591,250
65M	Probation Violation - Misd	5,171	(222)	(71)	4,878	5	24,390	\$375	\$1,829,250
110S	Direct Appeal - Misdemeanor	25	(4)		21	83	1,743	\$500	\$10,500
65F	Probation Violation - Felony	14,725	(730)	(303)	11,245	5	56,225	\$375	\$4,216,875
							195,728		\$14,277,625
65F	Probation Violation - Felony				2,447	5	12,235		
124M	Rule 24.035 Motion	649	(24)	(8)	617	21	12,957		
124A	Rule 24.035 Appeal	241	(5)	(6)	230	21	4,830		
35D	CD Felony Drug	5,512	(566)	(461)	4,485	14	62,790		
35F	CD Felony Other	21,065	(1,916)	(1,490)	17,659	14	247,226		
15	Murder 1st Degree	134	(24)	(14)	96	173	16,608		
20	Other Homicide	132	(23)	(18)	91	173	15,743		
30D	AB Felony Drug	3,064	(415)	(407)	2,242	14	31,388		
30F	AB Felony Other	3,776	(498)	(456)	2,822	14	39,508		
30X	AB Felony Sex	665	(107)	(27)	531	31	16,461		
35X	CD Felony Sex	327	(41)	(9)	277	31	8,587		
50V	Juvenile - Violent	583	(33)	(41)	509	10	5,090		
60	552 Release Petitions	27	(5)		22	14	308		
75	Special Writ	1			1	83	83		
110F	Direct Appeals - Felony	399	(22)	(8)	369	83	30,627		
110I	Direct Appeal - Interlocutory	6			6	83	498		
110J	Direct Appeal - Juvenile	3			3	83	249		
129A	Rule 29.15 Appeal	194	(3)	(2)	189	62	11,718		
129M	Rule 29.15 Motion	295	(13)	(6)	276	62	17,112		
150T	Trial Level Resentencing	2			2	21	42		
							534,060		
	Totals	80,702	(5,880)	(4,257)	70,570		729,788.00		\$ 14,277,625
							Fiscal Year 2012 Current Budget		\$ 1,225,000
							Additional Appropriation Require for Contracts - Assuming Attorney Staffing Stays the Same		\$ 13,052,625

NEW DECISION ITEM

RANK: 1 OF 5

Department	State Public Defender			Budget Unit	15111C				
Division	Public Defender			Conflicts and Overload by Private Counsel					
DI Name	Caseload Crisis - Option 2		DI#	1151002					
5. BREAK DOWN THE REQUEST BY BUDGET OBJECT CLASS, JOB CLASS, AND FUND SOURCE. IDENTIFY ONE-TIME COSTS.									
	Dept Req GR	Dept Req	Dept Req	Dept Req	Dept Req	Dept Req	Dept Req	Dept Req	Dept Req
		GR	FTE	FED	FED	OTHER	OTHER	TOTAL	TOTAL
Budget Object Class/Job Class	DOLLARS			DOLLARS	FTE	DOLLARS	FTE	DOLLARS	FTE
Total PS	0	0.0		0	0.0	0	0.0	0	0.0
Professional Services - 400	13,052,625							13,052,625	
Total EE	<u>13,052,625</u>			0		0		<u>13,052,625</u>	0
Program Distributions								0	
Total PSD	<u>0</u>			<u>0</u>		<u>0</u>		<u>0</u>	<u>0</u>
Transfers									
Total TRF	<u>0</u>			<u>0</u>		<u>0</u>		<u>0</u>	<u>0</u>
Grand Total	<u><u>13,052,625</u></u>	<u>0.0</u>		<u>0</u>	<u>0.0</u>	<u>0</u>	<u>0.0</u>	<u>13,052,625</u>	<u>0.0</u>

State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
OFFICE OF THE DIRECTOR								
Caseload Crisis - Overload PC - 1151002								
PROFESSIONAL SERVICES	0	0.00	0	0.00	13,052,625	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	13,052,625	0.00	0	0.00
GRAND TOTAL	\$0	0.00	\$0	0.00	\$13,052,625	0.00	\$0	0.00
GENERAL REVENUE	\$0	0.00	\$0	0.00	\$13,052,625	0.00		0.00
FEDERAL FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00
OTHER FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00

NEW DECISION ITEM
RANK: 2 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Social Workers	DI#	1151003

1. AMOUNT OF REQUEST

FY 2013 Budget Request					FY 2013 Governor's Recommendation				
	GR	Federal	Other	Total		GR	Federal	Other	Total
PS	1,653,792	0	0	1,653,792	PS	0	0	0	0
EE	351,900	0	0	351,900	EE	0	0	0	0
PSD	0	0	0	0	PSD	0	0	0	0
TRF	0	0	0	0	TRF	0	0	0	0
Total	2,005,692	0	0	2,005,692	Total	0	0	0	0

FTE 46.00 0.00 0.00 46.00

FTE 0.00 0.00 0.00 0.00

Est. Fringe	922,651	0	0	922,651
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

Other Funds:

2. THIS REQUEST CAN BE CATEGORIZED AS:

<input type="checkbox"/> New Legislation	<input checked="" type="checkbox"/> New Program	<input type="checkbox"/> Fund Switch
<input type="checkbox"/> Federal Mandate	<input type="checkbox"/> Program Expansion	<input type="checkbox"/> Cost to Continue
<input type="checkbox"/> GR Pick-Up	<input type="checkbox"/> Space Request	<input type="checkbox"/> Equipment Replacement
<input type="checkbox"/> Pay Plan	<input type="checkbox"/> Other:	

NEW DECISION ITEM
RANK: 2 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Social Workers	DI#	1151003

3. WHY IS THIS FUNDING NEEDED? PROVIDE AN EXPLANATION FOR ITEMS CHECKED IN #2. INCLUDE THE FEDERAL OR STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS PROGRAM.

This new decision item is closely tied to the Justice Reinvestment Initiative in conjunction with the Pew Institute and the U.S. Department of Justice to reduce recidivism and corrections costs. For ten years, MSPD had a handful of “Alternative Sentencing Specialists” – i.e., social workers - with a proven track record of reduced recidivism for those defendants with whom they worked. The program was dismantled five years ago in order to convert their FTE into attorney positions because of the skyrocketing caseload and a staffing line that had remained flat for almost a decade.

We do know, however, that social workers are a cost-effective way of reducing recidivism and lowering corrections costs. If those dual goals are a priority for this year’s legislative session, adding social workers to the public defender trial offices is a proven way of doing that.

Social workers assess the individualized factors contributing to a defendant’s presence in the justice system and develop client-specific sentencing proposals that address those factors by drawing upon community resources – third-party mentors, faith-based organizations, drug and mental health treatment options, etc. Unlike the post-plea sentencing reports prepared by probation officers (in only 15% of the cases according to Pew’s research), this information is available to defenders and prosecutors as they *develop* plea agreements, as well as to the court prior to imposing a sentence where the greatest impact on diverting appropriate people from prison can be made.

NEW DECISION ITEM
RANK: 2 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Social Workers	DI#	1151003

Licensed Clinical Social Workers	
COST BREAKDOWN	Social Workers FY2013 NEW DECISION ITEM
Personal Service	
Licensed Clinical Social Workers - Range 24	46.00
\$35,952	<u>\$1,653,792</u>
Total Personal Service	<u>\$1,653,792</u>
Expense & Equipment	
One-time Purchases	
Social Worker Package	46.00
\$2,875	<u>\$132,250</u>
Total One-Time Purchases	<u>\$132,250</u>
On-Going Costs	
Social Worker	46.00
\$4,775	<u>\$219,650</u>
Total Personnel Related On-Going Costs	<u>\$219,650</u>
Total Expense and Equipment	<u>\$351,900</u>
Total Decision Item Request	<u>\$2,005,692</u>

NEW DECISION ITEM
RANK: 2 OF 5

Department	State Public Defender	Budget Unit	15111C						
Division	Public Defender - Legal Services								
DI Name	Social Workers	DI#	1151003						
4. DESCRIBE THE DETAILED ASSUMPTIONS USED TO DERIVE THE SPECIFIC REQUESTED AMOUNT. (How did you determine that the requested number of FTE were appropriate? From what source or standard did you derive the requested levels of funding? Were alternatives such as outsourcing or automation considered? If based on new legislation, does request tie to TAFP fiscal note? If not, explain why. Detail which portions of the request are one-times and how those amounts were calculated.)									
<p>This decision item would place one Licensed Clinical Social Worker in each of the Trial Division Offices. Larger offices would have 2 and the St. Louis City and Kansas City offices would each have 4.</p>									
5. BREAK DOWN THE REQUEST BY BUDGET OBJECT CLASS, JOB CLASS, AND FUND SOURCE. IDENTIFY ONE-TIME COSTS.									
Budget Object Class/Job Class	Dept Req GR DOLLARS	Dept Req GR FTE	Dept Req FED DOLLARS	Dept Req FED FTE	Dept Req OTHER DOLLARS	Dept Req OTHER FTE	Dept Req TOTAL DOLLARS	Dept Req TOTAL FTE	Dept Req One-Time DOLLARS
Licensed Clinical Social Workers	1,653,792	46.0					1,653,792	46.0	
Total PS	1,653,792	46.0	0	0.0	0	0.0	1,653,792	46.0	0
Travel - 140	69,000						69,000		
Supplies - 190	8,050						8,050		
Communications - 340	55,200						55,200		
Computer Equipment - 480	53,590						53,590		
Other Equipment - 580	63,480						63,480		
Office Equipment - 590	15,180						15,180		
Rent	87,400						87,400		
Total EE	351,900		0		0		351,900		0
Grand Total	2,005,692	46	0	0	0	0	2,005,692	46	0

State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
OFFICE OF THE DIRECTOR								
Social Workers - 1151003								
OTHER	0	0.00	0	0.00	1,653,792	46.00	0	0.00
TOTAL - PS	0	0.00	0	0.00	1,653,792	46.00	0	0.00
TRAVEL, IN-STATE	0	0.00	0	0.00	69,000	0.00	0	0.00
SUPPLIES	0	0.00	0	0.00	8,050	0.00	0	0.00
COMMUNICATION SERV & SUPP	0	0.00	0	0.00	55,200	0.00	0	0.00
COMPUTER EQUIPMENT	0	0.00	0	0.00	53,590	0.00	0	0.00
OFFICE EQUIPMENT	0	0.00	0	0.00	63,480	0.00	0	0.00
OTHER EQUIPMENT	0	0.00	0	0.00	15,180	0.00	0	0.00
BUILDING LEASE PAYMENTS	0	0.00	0	0.00	87,400	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	351,900	0.00	0	0.00
GRAND TOTAL	\$0	0.00	\$0	0.00	\$2,005,692	46.00	\$0	0.00
GENERAL REVENUE	\$0	0.00	\$0	0.00	\$2,005,692	46.00		0.00
FEDERAL FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00
OTHER FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00

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NEW DECISION ITEM

RANK: 3 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Specialized Attorneys	DI#	1151004

1. AMOUNT OF REQUEST

	FY 2013 Budget Request			
	GR	Federal	Other	Total
PS	795,900	0	0	795,900
EE	152,400	0	0	152,400
PSD				
TRF				
Total	948,300	0	0	948,300
FTE	12.00	0.00	0.00	12.00

Est. Fringe	444,033	0	0	444,033
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

	FY 2013 Governor's Recommendation			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	0	0
TRF	0	0	0	0
Total	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. THIS REQUEST CAN BE CATEGORIZED AS:

<input type="checkbox"/> New Legislation	<input type="checkbox"/> New Program	<input type="checkbox"/> Fund Switch
<input type="checkbox"/> Federal Mandate	<input checked="" type="checkbox"/> Program Expansion	<input type="checkbox"/> Cost to Continue
<input type="checkbox"/> GR Pick-Up	<input type="checkbox"/> Space Request	<input type="checkbox"/> Equipment Replacement
<input type="checkbox"/> Pay Plan	<input type="checkbox"/> Other: _____	

3. WHY IS THIS FUNDING NEEDED? PROVIDE AN EXPLANATION FOR ITEMS CHECKED IN #2. INCLUDE THE FEDERAL OR STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS PROGRAM.

As set out in the Program Description, the state is obligated under both the U.S. Constitution Amendment VI and the Missouri Constitution, Article I, Section 18A to provide criminal defense lawyers for the indigent defendants. Chapter 600 RSMo assigns that responsibility to the Missouri State Public Defender System.

Overloaded trial lawyers simply do not have the time to become the subject-matter experts they need to effectively and accurately litigate such complex areas of criminal law as DNA, mental health issues, and the ever increasing use of forensic evidence. This is doubly true for the complicated maze of immigration consequences that accompany many criminal case outcomes and which lawyers are now required to both know and accurately advise their clients about under the recent U.S. Supreme Court case of *Padilla v Kentucky*.

NEW DECISION ITEM

RANK: 3 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Specialized Attorneys	DI#	1151004

Specialized Attorneys

COST BREAKDOWN	SPECIALIZED ATTORNEYS FY2013 NEW DECISION ITEM
Personal Service	
Assistant Public Defender IV - Range 36	12.00
\$60,325 + \$250 Per Pay Period	
\$66,325	<u>\$795,900</u>
Total Personal Service	<u>\$795,900</u>
Expense & Equipment	
One-time Purchases	
Attorney Package	12.00
\$2,950	<u>\$35,400</u>
Total One-Time Purchases	<u>\$35,400</u>
On-Going Costs	
Specialized Attorney	12.00
\$9,750	<u>\$117,000</u>
Total Personnel Related On-Going Costs	<u>\$117,000</u>
Total Expense and Equipment	<u>\$152,400</u>
Total Decision Item Request	<u>\$948,300</u>

NEW DECISION ITEM

RANK: 3 OF 5

Department	State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Specialized Attorneys	DI#	1151004

4. DESCRIBE THE DETAILED ASSUMPTIONS USED TO DERIVE THE SPECIFIC REQUESTED AMOUNT. (How did you determine that the requested number of FTE were appropriate? From what source or standard did you derive the requested levels of funding? Were alternatives such as outsourcing or automation considered? If based on new legislation, does request tie to TAFP fiscal note? If not, explain why. Detail which portions of the request are one-times and how those amounts were calculated.)

Ineffective assistance of counsel in these areas is among the most frequent causes of wrongful convictions and/or case reversals. This decision item proposes the creation of a handful of attorney specialists in these areas to assist local trial offices faced with these issues in a specific case, much as the Attorney General sends a capital litigation specialist in to assist local prosecutors who lack such expertise themselves. Ideally, all of Missouri's public defenders would be trained to address such issues as they arise in their cases, but the ideal is simply not possible given the caseloads under which the attorneys are now laboring. This proposal is one way of addressing that concern .

5. BREAK DOWN THE REQUEST BY BUDGET OBJECT CLASS, JOB CLASS, AND FUND SOURCE. IDENTIFY ONE-TIME COSTS.

Budget Object Class/Job Class	Dept Req GR DOLLARS	Dept Req GR FTE	Dept Req FED DOLLARS	Dept Req FED FTE	Dept Req OTHER DOLLARS	Dept Req OTHER FTE	Dept Req TOTAL DOLLARS	Dept Req TOTAL FTE	Dept Req One-Time DOLLARS
							0	0.0	
Specialized Attorneys	795,900	12.0					795,900	12.0	
Total PS	795,900	12.0	0	0.0	0	0.0	795,900	12.0	0
Travel - 140	73,800						73,800		
Supplies - 190	6,000						6,000		
Communications - 340	14,400						14,400		
Computer Equipment - 480	13,980						13,980		
Other Equipment - 580	16,860						16,860		
Office Equipment - 590	4,560						4,560		
Rent - 680	22,800						22,800		
Total EE	152,400		0		0		152,400		0
Grand Total	948,300	12	0	0	0	0	948,300	12	0

State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
OFFICE OF THE DIRECTOR								
Specialized Attorneys - 1151004								
ASSISTANT PUBLIC DEFENDER	0	0.00	0	0.00	795,888	12.00	0	0.00
TOTAL - PS	0	0.00	0	0.00	795,888	12.00	0	0.00
TRAVEL, IN-STATE	0	0.00	0	0.00	73,800	0.00	0	0.00
SUPPLIES	0	0.00	0	0.00	6,000	0.00	0	0.00
COMMUNICATION SERV & SUPP	0	0.00	0	0.00	14,400	0.00	0	0.00
COMPUTER EQUIPMENT	0	0.00	0	0.00	13,980	0.00	0	0.00
OFFICE EQUIPMENT	0	0.00	0	0.00	16,680	0.00	0	0.00
OTHER EQUIPMENT	0	0.00	0	0.00	4,560	0.00	0	0.00
BUILDING LEASE PAYMENTS	0	0.00	0	0.00	22,800	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	152,220	0.00	0	0.00
GRAND TOTAL	\$0	0.00	\$0	0.00	\$948,108	12.00	\$0	0.00
GENERAL REVENUE	\$0	0.00	\$0	0.00	\$948,108	12.00		0.00
FEDERAL FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00
OTHER FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00

NEW DECISION ITEM
RANK: 4 OF 5

Department	Office of the State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Support Staff for Existing Attorneys & Existing Caseload	DI#	1151005

1. AMOUNT OF REQUEST

	FY 2013 Budget Request			
	GR	Federal	Other	Total
PS	1,774,104	0	0	1,774,104
EE	663,230	0	0	663,230
PSD	0	0	0	0
TRF	0	0	0	0
Total	2,437,334	0	0	2,437,334
FTE	63.00	0.00	0.00	63.00

Est. Fringe	989,773	0	0	989,773
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

	FY 2013 Governor's Recommendation			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	0	0
TRF	0	0	0	0
Total	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. THIS REQUEST CAN BE CATEGORIZED AS:

<input type="checkbox"/> New Legislation	<input type="checkbox"/> New Program	<input type="checkbox"/> Fund Switch
<input type="checkbox"/> Federal Mandate	<input checked="" type="checkbox"/> Program Expansion	<input type="checkbox"/> Cost to Continue
<input type="checkbox"/> GR Pick-Up	<input type="checkbox"/> Space Request	<input type="checkbox"/> Equipment Replacement
<input type="checkbox"/> Pay Plan	<input type="checkbox"/> Other:	

3. WHY IS THIS FUNDING NEEDED? PROVIDE AN EXPLANATION FOR ITEMS CHECKED IN #2. INCLUDE THE FEDERAL OR STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS PROGRAM.

As set out in the Program Description, the state is obligated under both the U.S. Constitution Amendment VI and the Missouri Constitution, Article I, Section 18A to provide criminal defense lawyers for the indigent defendants. Chapter 600 RSMo assigns that responsibility to the Missouri State Public Defender System.

This new decision item includes the number of support staff needed to accompany the requested new attorney staff in that decision item, but does nothing to address the abysmal spread that currently exists between MSPD's existing attorneys and the number of support staff available to assist them in their work. This decision item is an attempt to correct that deficiency.

NEW DECISION ITEM

RANK: 4 **OF** 5

Department	Office of the State Public Defender	Budget Unit	<u>15111C</u>
Division	Public Defender - Legal Services		
DI Name	Support Staff for Existing Attorneys & Existing Caseload	DI#	1151005

By comparison as shown in the following chart, in Missouri's public defender's offices, you will find one legal assistant for every 10 lawyers, one clerical staff for every 5 lawyers, and one paralegal for every 54 lawyers. One investigator is responsible for the caseload of six attorneys. Even more disturbing are the numbers as compared to the numbers of cases those staff are responsible for helping the attorney work up.

Federal wage & hour restrictions prevent MSPD's support staff from working overtime without providing them time and a half compensation, which MSPD does not have to pay. "Work them harder" is therefore not an option. The result is that Missouri's public defenders not only struggle to handle many more cases than any lawyer can effectively do, we are also using up precious attorney time having those public defenders perform non-attorney tasks because there is no one else to do them.

The Senator who chaired the 2006 Senate Interim Committee on the Public Defender, noted his frustrations when, as a former Assistant Prosecuting Attorney, he and the court had to wait while the public defender attorney went to the clerk's office to personally copy the charging documents from the court files for the cases on that morning's docket because there was no support staff personnel available to do that task before the attorney went to court. This is typical throughout the state. It is extremely inefficient and expensive. For purposes of this budget, we are requesting one clerical person, one legal assistant, and one investigator for every three attorneys.

NEW DECISION ITEM

RANK: 4 OF 5

Department	Office of the State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Support Staff for Existing Attorneys & Existing Caseload	DI#	1151005

4. DESCRIBE THE DETAILED ASSUMPTIONS USED TO DERIVE THE SPECIFIC REQUESTED AMOUNT. (How did you determine that the requested number of FTE were appropriate? From what source or standard did you derive the requested levels of funding? Were alternatives such as outsourcing or automation considered? If based on new legislation, does request tie to TAFP fiscal note? If not, explain why. Detail which portions of the request are one-times and how those amounts were calculated.)

Every law practice management expert will tell you that lawyer time needs to be leveraged as much as possible by utilizing support staff for everything that can be done by a non-lawyer and freeing up the lawyer to do those things that only a lawyer can do. Some of those tasks are best done by a legal assistant or a paralegal, others by a clerk, and still others by an investigator. But the goal is always to preserve the more expensive lawyer's time for those things that require a law license and utilize the less-expensive support staff personnel for everything else. For this reason, you will generally find many more support staff in a private law firm than you'll find attorneys. A survey by the Missouri Office of Prosecution Services showed that even in Missouri's prosecuting attorney's offices, you'll find an average of 1-2 support staff for every 1 attorney. It is the economic model that makes the most sense.

NEW DECISION ITEM
RANK: 4 OF 5

Department Office of the State Public Defender **Budget Unit** 15111C
Division Public Defender - Legal Services
DI Name Support Staff for Existing Attorneys & Existing Caseload **DI#** 1151005

Trial and Appellate Divisions					9/2/2011
	Paralegal	Investigator	Legal Assistant	Secretary	Mitigation Specialist
Current Staff	6.50	55.50	36.00	67.50	3.00
Ratio of Support Staff to Attorney Staff of 348.50	1 for Every 53+ Attorneys	1 for Every 6+ Attorneys	1 for Every 9.5 Attorneys	1 for Every 5+ Attorneys	1 for Every 116 Attorneys
Ratio of Support Staff To Caseload - 80,702 Trial & Appellate Division Cases	1 for Every 12,416 Cases	1 for Every 1,454 Cases	1 for Every 2,242 Cases	1 for Every 1,196 Cases	1 for Every 26,901 Cases
	Not Requesting				Not Requesting

Trial and Appellate Divisions			
	Investigator	Legal Assistant	Secretary
Appropriate Staffing for 348.50 Attorneys	116.00	116.00	116.00
Current Staff	55.50	36.00	67.50
Need	60.50	80.00	48.50

Three-year Phase-in = \$2.4 Million in FY13: In recognition of the realities of the current economic state, as well as the logistical challenges involved in both hiring and finding facilities to accommodate such a large staffing increase in one fell swoop, this budget proposes a three-year phase-in of the staffing increase associated with this decision item. This reduces the cost of this decision item from a total of \$7.3 million down to \$2.4million for FY13 as illustrated in the cost breakdown table.

Current Support Staff Adjustment		
Current Staff Adjustment	CATCH-UP	3 Year Phase -In
COST BREAKDOWN	Total Costs	FY2013 NEW DECISION ITEM
Personal Service		
Investigators - Range 23 \$34,644	61.00 \$2,113,284	20.00 \$692,880
Legal Assistants - Range 15 \$25,944	80.00 \$2,075,520	27.00 \$700,488
Secretaries - Range 12 \$23,796	49.00 <u>\$1,166,004</u>	16.00 <u>\$380,736</u>
Total Personal Service	190.00 \$5,354,808	63.00 \$1,774,104
Expense & Equipment		
One-time Purchases		
Investigator Package \$2,875	61.00 \$175,375	20.00 \$57,500
Legal Assistant Package \$2,875	80.00 \$230,000	27.00 \$77,625
Secretary Package \$9,105	49.00 <u>\$446,145</u>	16.00 <u>\$145,680</u>
Total One-Time Purchases	\$851,520	\$280,805
On-Going Costs		
Investigator \$9,275	61.00 \$565,775	20.00 \$185,500
Legal Assistant \$4,775	80.00 \$382,000	27.00 \$128,925
Secretary \$4,250	49.00 <u>\$208,250</u>	16.00 <u>\$68,000</u>
Total Personnel Related On-Going Costs	<u>\$1,156,025</u>	<u>\$382,425</u>
Total Expense and Equipment	<u>\$2,007,545</u>	<u>\$663,230</u>
Total Decision Item Request	\$7,362,353	\$2,437,334

NEW DECISION ITEM

RANK: 4 OF 5

Department	Office of the State Public Defender					Budget Unit	15111C		
Division	Public Defender - Legal Services								
DI Name	Support Staff for Existing Attorneys & Existing Caseload DI# 1151005								
5. BREAK DOWN THE REQUEST BY BUDGET OBJECT CLASS, JOB CLASS, AND FUND SOURCE. IDENTIFY ONE-TIME COSTS.									
Budget Object Class/Job Class	Dept Req GR DOLLARS	Dept Req GR FTE	Dept Req FED DOLLARS	Dept Req FED FTE	Dept Req OTHER DOLLARS	Dept Req OTHER FTE	Dept Req TOTAL DOLLARS	Dept Req TOTAL FTE	Dept Req One-Time DOLLARS
Investigator	692,880	20.0					692,880	20.0	
Legal Assistant	700,488	27.0					700,488	27.0	
Secretary	380,736	16.0					380,736	16.0	
Total PS	1,774,104	63.0	0	0.0	0	0.0	1,774,104	63.0	0
Travel - 140	160,500						160,500		
Supplies - 190	26,625						26,625		
Communications - 340	75,600						75,600		
Computer Equipment - 480	178,195						178,195		
Other Equipment - 580	81,900						81,900		
Office Equipment - 590	20,710						20,710		
Rent - 680	119,700						119,700		
Total EE	663,230		0		0		663,230		0
Program Distributions							0		
Total PSD	0		0		0		0		0
Transfers									
Total TRF	0		0		0		0		0
Grand Total	2,437,334	63.0	0	0.0	0	0.0	2,437,334	63.0	0

State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
OFFICE OF THE DIRECTOR								
Current Staff Adj - 1151005								
SECRETARY	0	0.00	0	0.00	1,081,224	43.00	0	0.00
INVESTIGATOR	0	0.00	0	0.00	692,880	20.00	0	0.00
TOTAL - PS	0	0.00	0	0.00	1,774,104	63.00	0	0.00
TRAVEL, IN-STATE	0	0.00	0	0.00	160,500	0.00	0	0.00
SUPPLIES	0	0.00	0	0.00	26,625	0.00	0	0.00
COMMUNICATION SERV & SUPP	0	0.00	0	0.00	75,600	0.00	0	0.00
COMPUTER EQUIPMENT	0	0.00	0	0.00	178,195	0.00	0	0.00
OFFICE EQUIPMENT	0	0.00	0	0.00	81,900	0.00	0	0.00
OTHER EQUIPMENT	0	0.00	0	0.00	20,710	0.00	0	0.00
BUILDING LEASE PAYMENTS	0	0.00	0	0.00	119,700	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	663,230	0.00	0	0.00
GRAND TOTAL	\$0	0.00	\$0	0.00	\$2,437,334	63.00	\$0	0.00
GENERAL REVENUE	\$0	0.00	\$0	0.00	\$2,437,334	63.00		0.00
FEDERAL FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00
OTHER FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00

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NEW DECISION ITEM

RANK: 5 OF 5

Department	State Public Defender	Budget Unit	
Division	Public Defender - Legal Services		
DI Name	Public Defender Office Space Requirements	DI#	1151006

1. AMOUNT OF REQUEST

FY 2013 Budget Request					FY 2013 Governor's Recommendation				
	GR	Federal	Other	Total		GR	Federal	Other	Total
PS	0	0	0	0	PS	0	0	0	0
EE	2,151,511	0	0	2,151,511	EE	0	0	0	0
PSD	0	0	0	0	PSD	0	0	0	0
TRF	0	0	0	0	TRF	0	0	0	0
Total	2,151,511	0	0	2,151,511	Total	0	0	0	0
FTE	0.00	0.00	0.00	0.00	FTE	0.00	0.00	0.00	0.00
Est. Fringe	0	0	0	0	Est. Fringe	0	0	0	0
<i>Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.</i>					<i>Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.</i>				

Other Funds:

Other Funds:

2. THIS REQUEST CAN BE CATEGORIZED AS:

<input type="checkbox"/> New Legislation	<input type="checkbox"/> New Program	<input type="checkbox"/> Fund Switch
<input type="checkbox"/> Federal Mandate	<input type="checkbox"/> Program Expansion	<input type="checkbox"/> Cost to Continue
<input type="checkbox"/> GR Pick-Up	<input checked="" type="checkbox"/> Space Request	<input type="checkbox"/> Equipment Replacement
<input type="checkbox"/> Pay Plan	<input type="checkbox"/> Other: _____	

NEW DECISION ITEM

RANK: 5 OF 5

Department	State Public Defender	Budget Unit	
Division	Public Defender - Legal Services		
DI Name	Public Defender Office Space Requirements	DI#1151006	

3. WHY IS THIS FUNDING NEEDED? PROVIDE AN EXPLANATION FOR ITEMS CHECKED IN #2. INCLUDE THE FEDERAL OR STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS PROGRAM.

When the Missouri State Public Defender System was established, the burden and expense of office space and utility services for local public defender offices was placed on the counties served by that office. That burden remains today in the form of RSMo. 600.040.1 which reads:

The city or county shall provide office space and utility services, other than telephone service, for the circuit or regional public defender and his personnel. If there is more than one county in a circuit or region, each county shall contribute, on the basis of population, its pro rata share of the costs of office space and utility services, other than telephone service. The state shall pay, within the limits of the appropriation therefore, all other expenses and costs of the state public defender system authorized under this chapter.

Increasingly, county governments object to and resent being required to pay for office space for a Department of State Government.

When the Missouri State Public Defender System was first established and RSMo. 600.040.1 was first enacted, public defender services in most areas of the state were provided through private attorneys who had contracted with Missouri's Public Defender System to provide such services. Since these private contract counsel provided services from their private offices, county governments did not have to provide office space and utilities. In reality the State paid, through the established contract rate.

In 1997, the legislature responded to the refusal of some counties to provide or pay for Public Defender office space. Language was added to House Bill 5, allowing for the interception of prisoner per diem payments to counties failing to meet their obligations under 600.040. The state has intercepted some money intended for counties that scoffed at their obligation, however, the interceptions and threat of interceptions have put great strain on state-county relations.

In 1999, the legislature once again addressed the problem of providing Public Defender office space. A new section, (RSMo. 600.101), was added which allows disputes between counties and the State Public Defender to be submitted to the Judicial Finance Commission (RSMo. 477.600). Section 600.101 also calls for a study and report from the Judicial Resources Commission to be prepared for the chairs of the House and Senate Judiciary Committees, Senate Appropriations Committee, and House Budget Committee. The Missouri State Public Defender System and the counties of Public Defender Area 36, Butler, Carter, Ripley and Wayne found it necessary to take a dispute to this commission. However, by its very nature, this commission is designed to reach compromises and as a result, MSPD has been ordered to pay a portion of this rent that by statute should be a county responsibility.

NEW DECISION ITEM

RANK: 5 OF 5

Department	State Public Defender	Budget Unit	
Division	Public Defender - Legal Services		
DI Name	Public Defender Office Space Requirements	DI#1151006	

Disputes have not only concerned whether or not office space will be provided at all, they have included where and what space will be provided. Either because of economic necessity or in resistance to their obligation, some counties house the Public Defender in inadequate facilities. Public Defenders have endured the indignities of insect infestation, lack of privacy, leaky roofs, cramped quarters, and black mold to name a few.

Counties simply have no interest in the adequacy of the Public Defender facilities, especially when they don't want to provide space at all. Most of our offices serve multiple counties. It is a logistical nightmare to get multiple commissioners in multiple counties to sign off on every change to a lease involving one of our offices. (including no less than 33 commissioners in our Chillicothe office, which covers 11 counties!) A number of counties refuse to provide or pay for additional space to accommodate growing defender staff, a problem that will multiply if additional staffing is forthcoming in this legislative session. While MSPD has not recently received significant additional staffing, we do move positions among offices based upon growing / dropping caseload.

Some of the results:

- Attorneys doubled up in offices, making a confidential client meeting impossible;
- Attorneys literally setting up an office in the telephone / computer server closet, as well as taking over all public space in the office – break room, conference room, library – so that these generally standard areas in a law office are no longer available anywhere within in the office;
- Having to install locks on all filing cabinets and moving them into a public hallway to free up space for staff to squeeze in another desk;
- MSPD picking up the difference in the rent for additional essential space in a few situations despite a lack of funding for that purpose.
- Counties fighting with MSPD and among themselves when more than one county covered by an office has available 'free' county space and doesn't want to contribute cash to another county instead. These disputes have escalated to lawsuits between counties on at least one occasion. The State Public Defender Commission is interested in locating offices in multi-county Districts where they will be the most effective and efficient use of state resources. Counties do not share that interest, preferring the office to be located where it will cost the least and have the most positive economic impact on their local economy, efficiency, the desires of other counties and the State Public Defender notwithstanding.
- Some counties flatly refusing to pay any rent for an office not located in their county, with the result that MSPD must pick up their portion of the lease cost, despite a lack of funding for this purpose. There is a provision for the state to intercept prisoner per diem reimbursement costs to cover unpaid county liabilities for public defender office space. MSPD tried to invoke this at one point in the past, but was asked by the then gubernatorial administration to forego the remedy because of the hostility being caused between the state and the counties as a result of the intercept.

NEW DECISION ITEM

RANK: 5 OF 5

Department	State Public Defender	Budget Unit	
Division	Public Defender - Legal Services		
DI Name	Public Defender Office Space Requirements	DI#	1151006

- Receiving an eviction notice because six counties refused to pay, between them, a total increase of \$48.67 per month imposed by the landlord. To prevent the eviction, MSPD agreed to pay the difference. This office has now been relocated.

- Some counties providing space that is in very poor shape and unfit for a law office. We have been placed in office space where the ceiling tiles were crumbling onto the attorneys' desks, where the "closed file room" is a basement with a dirt floor that turns to mud with every rain, in offices with asbestos, cockroaches, termite and spider infestations. Such unsuitable and difficult working conditions undoubtedly contribute to our turnover, as well as to reduced productivity, yet MSPD's hands are tied.

The State Public Defender is not interested in securing fancy, luxurious offices. Its interest is to have facilities adequate to ensure efficient, effective use of personnel and other resources appropriated to the Department.

SUMMARY

The current statutory scheme requires counties to cooperate with each other, and with this Department, to provide office space for a Department of State Government. They do so under the threat of prisoner per diem interceptions. It is a formula for conflict between the State Public Defender and counties, as well as between counties of multi-county districts. The problem is sure to get worse in the future. Under the current statute, Missouri's Public Defender Commission is unable to establish and/or expand offices as needed or where needed as caseload varies from year to year.

A change in the legislation, specifically repealing portions of RSMo. 600.040.1, is recommended. Although probably adequate at the time the Public Defender system was first organized, this Department has grown far beyond a humble beginning of 200 FTE to 587 current FTE. The cost of this additional space has been added to the counties burden. The legislature, judiciary and public demand a swift, efficient administration of justice. In order to meet that demand, the Missouri Public Defender System needs adequate, efficient physical plants in all its offices. This need is simply not being met under the current statutory scheme.

Cost of Renting Office Space for All Local Public Defender Offices Revised September 7, 2011						
Office	Est. Sq. Ft	Total Rent	Estimated Utilities	Janitor/ Trash	Total Cost	Comment
Kirksville	2,060	\$14,400	Inclusive	\$1,800	\$16,200	Counties Lease - Expires 05/31/2017
Maryville	2,060	\$10,350	Inclusive	\$1,200	\$11,550	Counties Lease - Expires 12/31/2013
St. Joseph	5,400	\$32,600	Inclusive	County	\$32,600	County Lease - Expires 06/15/2012
Liberty	5,100	\$53,115			\$53,115	In County Owned Space
Hannibal	2,625	\$35,700	Inclusive	\$2,700	\$38,400	Counties Lease - Expires 12/31/2014
St. Charles	3,675	\$45,000			\$45,000	In Courthouse
Fulton	3,440	\$26,400		\$1,800	\$28,200	Counties Lease - Expires 12/31/2011
Columbia	6,085	\$65,775		\$3,600	\$69,375	In County Owned Space - Inadequate
Moberly	2,800	\$30,000	Inclusive	\$3,600	\$33,600	Counties Lease - Expires 12/31/2017
Sedalia	3,675	\$38,500	Inclusive	\$3,000	\$41,500	Counties Lease - Lease Expired
Kansas City	14,575	\$250,000	Inclusive	\$0	\$250,000	County Lease - Lease Expired 12/31/2009
Harrisonville	4,500	\$66,915		\$4,420	\$71,335	Counties Lease - Expires 08/31/2017
Jefferson City	3,750	\$42,200			\$42,200	In County Owned Space
Union	3,225	\$40,325	Inclusive	\$3,600	\$43,925	In County Owned Space
St. Louis County	8,815	\$185,000	Inclusive	\$0	\$185,000	In Courthouse
St. Louis City	13,125	\$280,000	Inclusive	\$37,440	\$317,440	In Carnahan Courthouse
Hillsboro	3,345	\$41,250	\$0	\$0	\$41,250	In Courthouse
Farmington	4,641	\$45,625		\$3,000	\$48,625	Counties Lease - Expired 06/30/2010
Rolla	7,084	\$36,000		\$3,600	\$39,600	Counties Lease - Expires 01/31/2018
Lebanon	4,100	\$28,800	\$7,200	\$2,700	\$38,700	Counties Lease - Expires 12/31/2014
Nevada	3,000	\$24,840	Inclusive	\$1,500	\$26,340	Counties Lease - Expires 12/31/2011
Carthage	6,700	\$120,750			\$120,750	In County Owned Space -Inadequate
Bolivar	3,500	\$18,600	\$4,650	\$3,600	\$26,850	Counties Lease-Expires 06/30/2018
Springfield	7,450	\$117,950	Inclusive	\$4,800	\$122,750	Counties Lease - Expires 06/30/2012
Jackson	5,377	\$60,750			\$60,750	In County Owned Space
Caruthersville	3,103	\$31,775	Inclusive	\$1,200	\$32,975	Counties Lease - Expired 06/30/95
Kennett	1,777	\$32,175	\$8,044	\$1,200	\$41,419	In County Owned Space
Poplar Bluff	4,480	\$43,500	\$18,000	\$3,600	\$65,100	Counties/State Lease Expires 01/31/2016
West Plains	4,800	\$13,800	Inclusive	\$1,500	\$15,300	Counties Lease - Expires 12/31/2016
Monett	4,300	\$46,250	\$11,563	\$1,680	\$59,493	Counties Lease - Expired 09/30/09
Chillicothe	4,500	\$30,000	Inclusive	\$2,100	\$32,100	Counties Lease - Expires 12/31/2017
Ava	4,560	\$28,500		\$1,920	\$30,420	Counties Lease - Expires 05/31/2015
Troy	3,225	\$34,650			\$34,650	In County Owned Space
Columbia Defenderplex	22,450	\$305,000	\$35,000	\$0	\$340,000	State Public Defender Pays
St. Louis Defenderplex	15,959	\$216,114	Inclusive	\$0	\$216,114	State Public Defender Pays
KC Defenderplex	8,765	<u>\$134,650</u>	Inclusive	\$0	\$134,650	State Public Defender Pays
	208,026	\$2,627,259	\$84,456	\$95,560	\$2,807,275	
	Less: Current Agency Payments				\$655,764	
		Total Implementation Costs			\$2,151,511	

NEW DECISION ITEM

RANK: 5 OF 5

Department	State Public Defender	Budget Unit	
Division	Public Defender - Legal Services		
DI Name	Public Defender Office Space Requirements	DI#1151006	

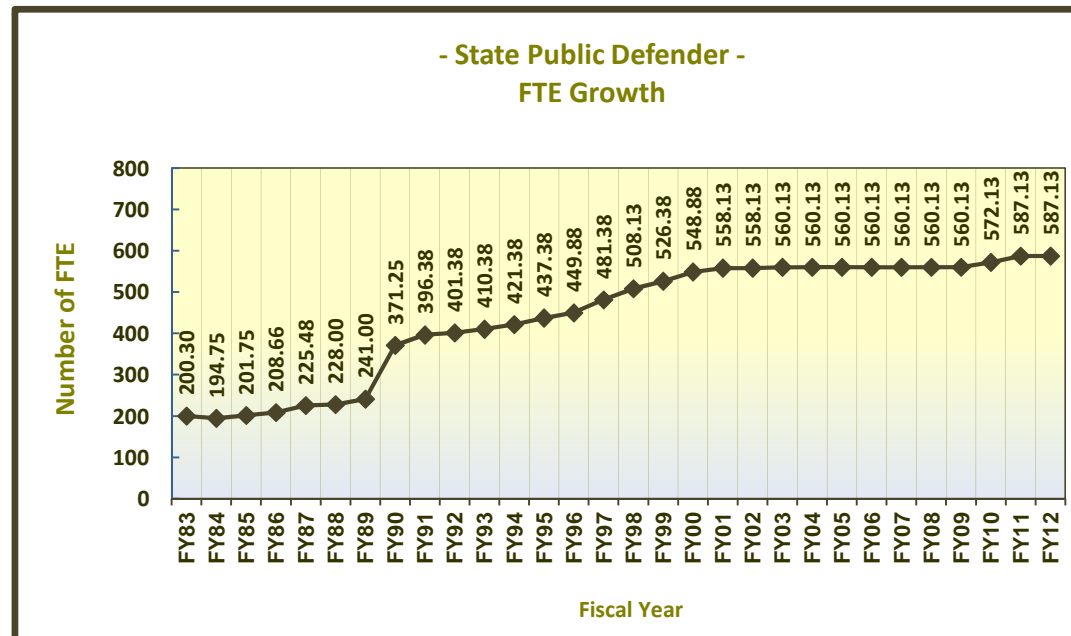
4. DESCRIBE THE DETAILED ASSUMPTIONS USED TO DERIVE THE SPECIFIC REQUESTED AMOUNT. (How did you determine that the requested number of FTE were appropriate? From what source or standard did you derive the requested levels of funding? Were alternatives such as outsourcing or automation considered? If based on new legislation, does request tie to TAFP fiscal note? If not, explain why. Detail which portions of the request are one-times and how those amounts were calculated.)

See Spreadsheet on the following page.

5. BREAK DOWN THE REQUEST BY BUDGET OBJECT CLASS, JOB CLASS, AND FUND SOURCE. IDENTIFY ONE-TIME COSTS.

Budget Object Class/Job Class	Dept Req GR DOLLARS	Dept Req GR FTE	Dept Req FED DOLLARS	Dept Req FED FTE	Dept Req OTHER DOLLARS	Dept Req OTHER FTE	Dept Req TOTAL DOLLARS	Dept Req TOTAL FTE	Dept Req One-Time DOLLARS
							0	0.0	
							0	0.0	
Total PS	0	0.0	0	0.0	0	0.0	0	0.0	0
Fuel & Utilities - 180	84,456						84,456		
Housekeeping & Janitorial - 420	95,560						95,560		
Building Lease Payments - 680	1,971,495						1,971,495		
Total EE	2,151,511		0		0		2,151,511		0
Program Distributions							0		
Total PSD	0		0		0		0		0
Transfers									
Total TRF	0		0		0		0		0
Grand Total	2,151,511	0.0	0	0.0	0	0.0	2,151,511	0.0	0

FTE Growth By Fiscal Year			
Fiscal Year	Number of FTE	Fiscal Year	Number of FTE
FY83	200.30	FY98	508.13
FY84	194.75	FY99	526.38
FY85	201.75	FY00	548.88
FY86	208.66	FY01	558.13
FY87	225.48	FY02	558.13
FY88	228.00	FY03	560.13
FY89	241.00	FY04	560.13
FY90	371.25	FY05	560.13
FY91	396.38	FY06	560.13
FY92	401.38	FY07	560.13
FY93	410.38	FY08	560.13
FY94	421.38	FY09	560.13
FY95	437.38	FY10	572.13
FY96	449.88	FY11	587.13
FY97	481.38	FY12	587.13



State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
OFFICE OF THE DIRECTOR								
Office Space Requirements - 1151006								
FUEL & UTILITIES	0	0.00	0	0.00	84,456	0.00	0	0.00
HOUSEKEEPING & JANITORIAL SERV	0	0.00	0	0.00	95,560	0.00	0	0.00
BUILDING LEASE PAYMENTS	0	0.00	0	0.00	1,971,495	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	2,151,511	0.00	0	0.00
GRAND TOTAL	\$0	0.00	\$0	0.00	\$2,151,511	0.00	\$0	0.00
GENERAL REVENUE	\$0	0.00	\$0	0.00	\$2,151,511	0.00		0.00
FEDERAL FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00
OTHER FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00

State Public Defender

DECISION ITEM SUMMARY

Budget Unit								
Decision Item	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Budget Object Summary	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Fund	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
GRANTS								
CORE								
PROGRAM-SPECIFIC								
PUBLIC DEFENDER-FEDERAL & OTHR	1,643	0.00	125,000	0.00	125,000	0.00	0	0.00
TOTAL - PD	1,643	0.00	125,000	0.00	125,000	0.00	0	0.00
TOTAL	1,643	0.00	125,000	0.00	125,000	0.00	0	0.00
GRAND TOTAL	\$1,643	0.00	\$125,000	0.00	\$125,000	0.00	\$0	0.00

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CORE DECISION ITEM

Department	Public Defender	Budget Unit	15131C
Division	Public Defender - Federal & Other		
Core -	Core Request		

1. CORE FINANCIAL SUMMARY

	FY 2013 Budget Request			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	125,000	125,000
TRF	0	0	0	0
Total	0	0	125,000	125,000
FTE	0.00	0.00	0.00	0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

	FY 2013 Governor's Recommendation			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	0	0
TRF	0	0	0	0
Total	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. CORE DESCRIPTION

Appropriation is requested to have spending authority should Feder or Other Funds become available during Fiscal Year 2013 to assist in funding the State Public Defender System.

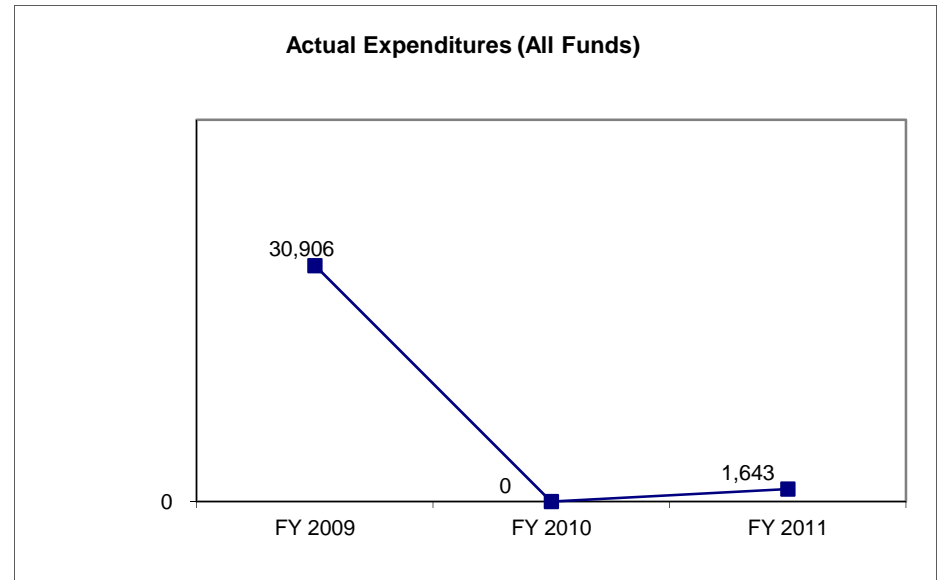
3. PROGRAM LISTING (list programs included in this core funding)

CORE DECISION ITEM

Department	Public Defender	Budget Unit	15131C
Division	Public Defender - Federal & Other		
Core -	Core Request		

4. FINANCIAL HISTORY

	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Current Yr.
Appropriation (All Funds)	125,000	125,000	125,000	125,000
Less Reverted (All Funds)	0	0	0	0
Budget Authority (All Funds)	125,000	125,000	125,000	125,000
Actual Expenditures (All Funds)	30,906	0	1,643	0
Unexpended (All Funds)	94,094	125,000	123,357	125,000
Unexpended, by Fund:				
General Revenue	0	0	0	0
Federal	0	0	0	0
Other	94,094	125,000	123,357	125,000



Reverted includes Governor's standard 3 percent reserve (when applicable) and any extraordinary expenditure restrictions.

NOTES:

State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
GRANTS								
CORE								
PROGRAM DISTRIBUTIONS	1,643	0.00	125,000	0.00	125,000	0.00	0	0.00
TOTAL - PD	1,643	0.00	125,000	0.00	125,000	0.00	0	0.00
GRAND TOTAL	\$1,643	0.00	\$125,000	0.00	\$125,000	0.00	\$0	0.00
GENERAL REVENUE	\$0	0.00	\$0	0.00	\$0	0.00		0.00
FEDERAL FUNDS	\$1,643	0.00	\$125,000	0.00	\$125,000	0.00		0.00
OTHER FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00

State Public Defender

DECISION ITEM SUMMARY

Budget Unit								
Decision Item	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Budget Object Summary	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Fund	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
LEGAL DEFENSE & DEFENDER FUND								
CORE								
PERSONAL SERVICES								
LEGAL DEFENSE AND DEFENDER	119,299	2.00	129,507	2.00	129,507	2.00	0	0.00
TOTAL - PS	119,299	2.00	129,507	2.00	129,507	2.00	0	0.00
EXPENSE & EQUIPMENT								
LEGAL DEFENSE AND DEFENDER	1,619,587	0.00	2,795,756	0.00	2,795,756	0.00	0	0.00
TOTAL - EE	1,619,587	0.00	2,795,756	0.00	2,795,756	0.00	0	0.00
PROGRAM-SPECIFIC								
LEGAL DEFENSE AND DEFENDER	34,903	0.00	55,000	0.00	55,000	0.00	0	0.00
TOTAL - PD	34,903	0.00	55,000	0.00	55,000	0.00	0	0.00
TOTAL	1,773,789	2.00	2,980,263	2.00	2,980,263	2.00	0	0.00
GRAND TOTAL	\$1,773,789	2.00	\$2,980,263	2.00	\$2,980,263	2.00	\$0	0.00

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CORE DECISION ITEM

Department	State Public Defender	Budget Unit	15141C
Division	Public Defender		
Core -	Legal Defense & Defender	Core Request	

1. CORE FINANCIAL SUMMARY

	FY 2013 Budget Request			
	GR	Federal	Other	Total
PS	0	0	129,507	129,507
EE	0	0	2,850,756	2,850,756
PSD	0	0	0	0
TRF	0	0	0	0
Total	0	0	2,980,263	2,980,263

FTE 0.00 0.00 0.00 0.00

Est. Fringe	0	0	72,252	72,252
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

	FY 2013 Governor's Recommendation			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	0	0
TRF	0	0	0	0
Total	0	0	0	0

FTE 0.00 0.00 0.00 0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. CORE DESCRIPTION

As the laws continue to change and staffing continues to change, training of public defenders and their staff becomes more critical. The funds in this appropriation are collected from the indigent accused and by statute are used at the discretion of the Director of the State Public Defender System for the operation of the department, including training, Missouri Bar Dues, Westlaw , one-time equipment purchases and office moves.

CORE DECISION ITEM

Department	State Public Defender	Budget Unit	15141C
Division	Public Defender		
Core -	Legal Defense & Defender	Core Request	

3. PROGRAM LISTING (list programs included in this core funding)

Training of all employees within the State Public Defender System is an important part of the day to day operation. Examples of system training provided would include:

Trial Skills Workshop

Advanced Trial Skills Training

New Attorney Training

New Employee Training

New Defender Workshop

Missouri Association of Criminal Defense Lawyers

Appellate Record Preservation

National Association of Criminal Defense Attorneys

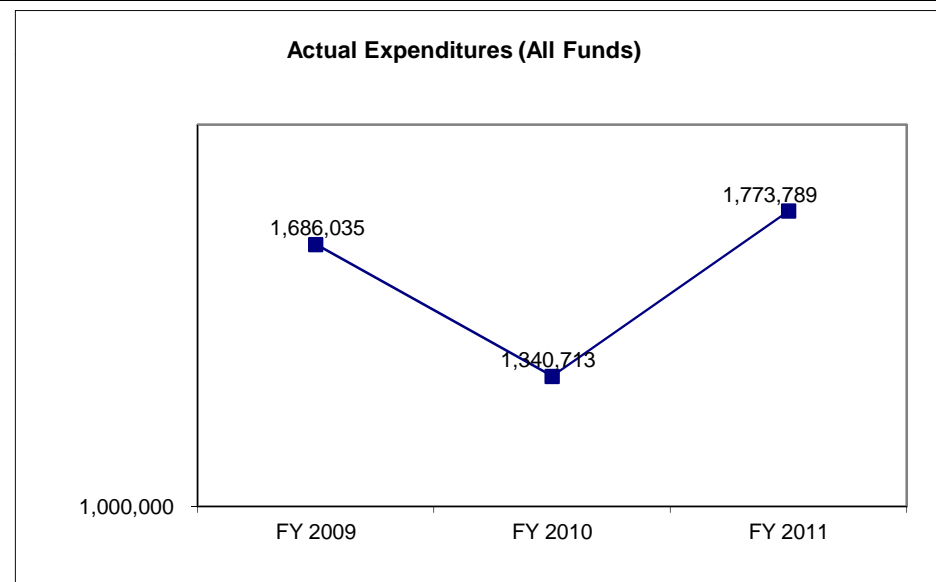
Life in the Balance (Death Penalty)

Computer Training

Defender Management

4. FINANCIAL HISTORY

	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Current Yr.
Appropriation (All Funds)	2,980,263	2,980,263	2,986,263	2,980,263
Less Reverted (All Funds)	0	0	0	0
Budget Authority (All Funds)	2,980,263	2,980,263	2,986,263	2,980,263
Actual Expenditures (All Funds)	1,686,035	1,340,713	1,773,789	0
Unexpended (All Funds)	1,294,228	1,639,550	1,212,474	2,980,263



State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
LEGAL DEFENSE & DEFENDER FUND								
CORE								
DIVISION DIRECTOR	83,196	1.00	83,196	1.00	93,555	1.00	0	0.00
PROGRAM TECHNICIAN	36,103	1.00	35,952	1.00	35,952	1.00	0	0.00
OTHER	0	0.00	10,359	0.00	0	0.00	0	0.00
TOTAL - PS	119,299	2.00	129,507	2.00	129,507	2.00	0	0.00
TRAVEL, IN-STATE	328,594	0.00	375,000	0.00	400,000	0.00	0	0.00
TRAVEL, OUT-OF-STATE	11,491	0.00	20,000	0.00	25,000	0.00	0	0.00
FUEL & UTILITIES	24,036	0.00	500	0.00	0	0.00	0	0.00
SUPPLIES	105,654	0.00	115,000	0.00	125,000	0.00	0	0.00
PROFESSIONAL DEVELOPMENT	45,037	0.00	75,000	0.00	75,000	0.00	0	0.00
COMMUNICATION SERV & SUPP	306,088	0.00	350,000	0.00	350,000	0.00	0	0.00
PROFESSIONAL SERVICES	22,621	0.00	321,500	0.00	150,000	0.00	0	0.00
HOUSEKEEPING & JANITORIAL SERV	0	0.00	10,000	0.00	10,000	0.00	0	0.00
M&R SERVICES	258,973	0.00	350,000	0.00	350,000	0.00	0	0.00
COMPUTER EQUIPMENT	373,988	0.00	510,493	0.00	630,000	0.00	0	0.00
OFFICE EQUIPMENT	123,900	0.00	450,000	0.00	487,756	0.00	0	0.00
OTHER EQUIPMENT	0	0.00	3,000	0.00	3,000	0.00	0	0.00
BUILDING LEASE PAYMENTS	860	0.00	20,000	0.00	20,000	0.00	0	0.00
EQUIPMENT RENTALS & LEASES	2,800	0.00	20,000	0.00	20,000	0.00	0	0.00
MISCELLANEOUS EXPENSES	15,545	0.00	175,263	0.00	150,000	0.00	0	0.00
TOTAL - EE	1,619,587	0.00	2,795,756	0.00	2,795,756	0.00	0	0.00
REFUNDS	34,903	0.00	55,000	0.00	55,000	0.00	0	0.00
TOTAL - PD	34,903	0.00	55,000	0.00	55,000	0.00	0	0.00
GRAND TOTAL	\$1,773,789	2.00	\$2,980,263	2.00	\$2,980,263	2.00	\$0	0.00
GENERAL REVENUE	\$0	0.00	\$0	0.00	\$0	0.00		0.00
FEDERAL FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00
OTHER FUNDS	\$1,773,789	2.00	\$2,980,263	2.00	\$2,980,263	2.00		0.00

State Public Defender

DECISION ITEM SUMMARY

Budget Unit								
Decision Item	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Budget Object Summary	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Fund	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
EXTRAORDINARY EXPENSE/CONFLIC								
CORE								
EXPENSE & EQUIPMENT								
GENERAL REVENUE	2,848,058	0.00	2,558,059	0.00	2,558,059	0.00	0	0.00
TOTAL - EE	2,848,058	0.00	2,558,059	0.00	2,558,059	0.00	0	0.00
TOTAL	2,848,058	0.00	2,558,059	0.00	2,558,059	0.00	0	0.00
GRAND TOTAL	\$2,848,058	0.00	\$2,558,059	0.00	\$2,558,059	0.00	\$0	0.00

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CORE DECISION ITEM

Department	State Public Defender	Budget Unit	15151C
Division	Public Defender		
Core -	Homicide/Conflict & Extraordinary Expenses Core Request		

1. CORE FINANCIAL SUMMARY

	FY 2013 Budget Request			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	2,558,059	0	0	2,558,059
PSD	0	0	0	0
TRF	0	0	0	0
Total	2,558,059	0	0	2,558,059

FTE 0.00 0.00 0.00 0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

	FY 2013 Governor's Recommendation			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	0	0
TRF	0	0	0	0
Total	0	0	0	0

FTE 0.00 0.00 0.00 0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. CORE DESCRIPTION

This appropriation was established in 1989 to cover three kinds of expenses:

HOMICIDE / CAPITAL CASES: All costs associated with the defense of homicide and capital cases are paid out of this appropriation.

EXTRAORDINARY EXPENSES: Extraordinary expenses, defined as litigation expenses over \$500, are also paid out of this appropriation. These would include such things as an independent analysis of DNA evidence, mental health evaluations by expert witnesses, depositions, interpreters, medical records, transcripts, exhibits, etc.

CONFLICT CASES: When an indigent defense case is contracted out to private counsel for representation, the attorney's fees associated with that contract are paid out of this appropriation. Most often, the conflict that requires the case to be contracted out to private counsel is due to the existence of multiple co-defendants charged in a particular incident and all pointing the finger at one another, making it an ethical problem for the one defender office to represent more than one of them. Recently, cases have also been contracted out because of case overload in an attempt to give the overloaded office some relief. In FY2011, MSPD contracted out less than 2% of its total caseload, despite a crushing case overload, because funds were simply not available to contract out more. This is addressed within this Budget Request and explained in further detail in Decision Items 1 and 2.

CORE DECISION ITEM

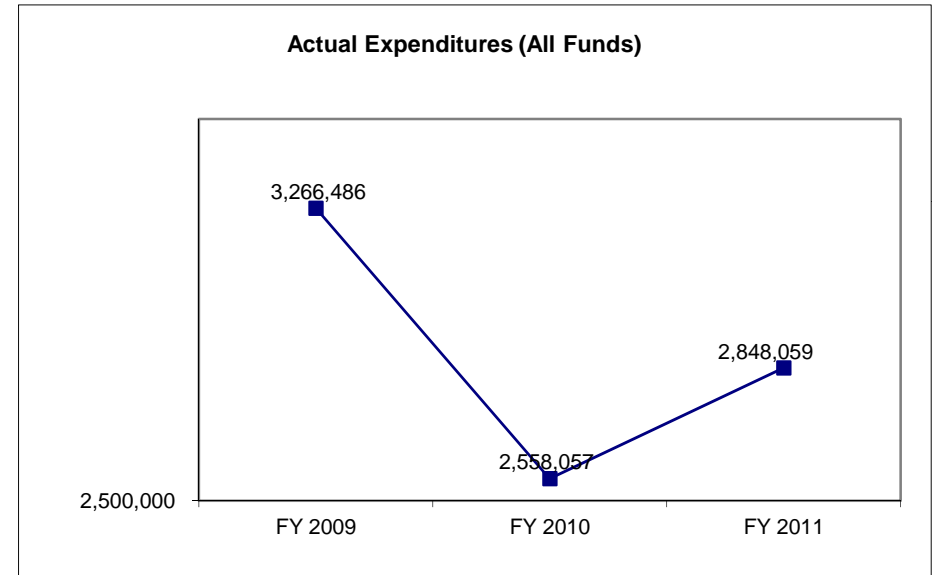
Department	State Public Defender	Budget Unit	15151C
Division	Public Defender		
Core -	Homicide/Conflict & Extraordinary Expenses Core Request		

3. PROGRAM LISTING (list programs included in this core funding)

There are no separate programs within this appropriation.

4. FINANCIAL HISTORY

	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Current Yr.
Appropriation (All Funds)	3,391,502	2,558,059	2,558,059	2,558,059
Less Reverted (All Funds)	0	0	0	0
Budget Authority (All Funds)	3,391,502	2,558,059	2,558,059	2,558,059
Actual Expenditures (All Funds)	3,266,486	2,558,057	2,848,059	0
Unexpended (All Funds)	125,016	2	(290,000)	2,558,059
Unexpended, by Fund:				
General Revenue	0	0	0	0
Federal	0	0	0	0
Other	0	0	0	0



Reverted includes Governor's standard 3 percent reserve (when applicable) and any extraordinary expenditure restrictions.

NOTES:

State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
EXTRAORDINARY EXPENSE/CONFLIC								
CORE								
TRAVEL, IN-STATE	263,142	0.00	265,000	0.00	265,000	0.00	0	0.00
TRAVEL, OUT-OF-STATE	18,111	0.00	20,000	0.00	20,000	0.00	0	0.00
FUEL & UTILITIES	5,688	0.00	7,500	0.00	7,500	0.00	0	0.00
SUPPLIES	32,876	0.00	37,500	0.00	37,500	0.00	0	0.00
COMMUNICATION SERV & SUPP	11,600	0.00	20,000	0.00	20,000	0.00	0	0.00
PROFESSIONAL SERVICES	2,329,016	0.00	1,989,559	0.00	2,013,559	0.00	0	0.00
M&R SERVICES	8,288	0.00	12,000	0.00	10,000	0.00	0	0.00
BUILDING LEASE PAYMENTS	176,581	0.00	198,000	0.00	180,000	0.00	0	0.00
EQUIPMENT RENTALS & LEASES	579	0.00	1,500	0.00	1,500	0.00	0	0.00
MISCELLANEOUS EXPENSES	2,177	0.00	7,000	0.00	3,000	0.00	0	0.00
TOTAL - EE	2,848,058	0.00	2,558,059	0.00	2,558,059	0.00	0	0.00
GRAND TOTAL	\$2,848,058	0.00	\$2,558,059	0.00	\$2,558,059	0.00	\$0	0.00
GENERAL REVENUE	\$2,848,058	0.00	\$2,558,059	0.00	\$2,558,059	0.00		0.00
FEDERAL FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00
OTHER FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00

State Public Defender

DECISION ITEM SUMMARY

Budget Unit								
Decision Item	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Budget Object Summary	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Fund	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
DEBT OFFSET ESCROW FUND								
CORE								
PROGRAM-SPECIFIC								
DEBT OFFSET ESCROW	1,061,854	0.00	350,000	0.00	350,000	0.00	0	0.00
TOTAL - PD	1,061,854	0.00	350,000	0.00	350,000	0.00	0	0.00
TOTAL	1,061,854	0.00	350,000	0.00	350,000	0.00	0	0.00
GRAND TOTAL	\$1,061,854	0.00	\$350,000	0.00	\$350,000	0.00	\$0	0.00

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CORE DECISION ITEM

Department	Office of the State Public Defender	Budget Unit	15161C
Division	Public Defender		
Core -	Debt Offset Excrow Fund Core Request		

1. CORE FINANCIAL SUMMARY

	FY 2013 Budget Request			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	350,000	350,000
TRF	0	0	0	0
Total	0	0	350,000	350,000

FTE 0.00 0.00 0.00 0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

	FY 2013 Governor's Recommendation			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	0	0
TRF	0	0	0	0
Total	0	0	0	0

FTE 0.00 0.00 0.00 0.00

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. CORE DESCRIPTION

Beginning in Fiscal Year 1995, each agency participating in the Department of Revenue's Debt Offset Program, was required to establish an appropriation to accept revolving fund money which is intercepted from Missouri State Income Tax Refunds.

3. PROGRAM LISTING (list programs included in this core funding)

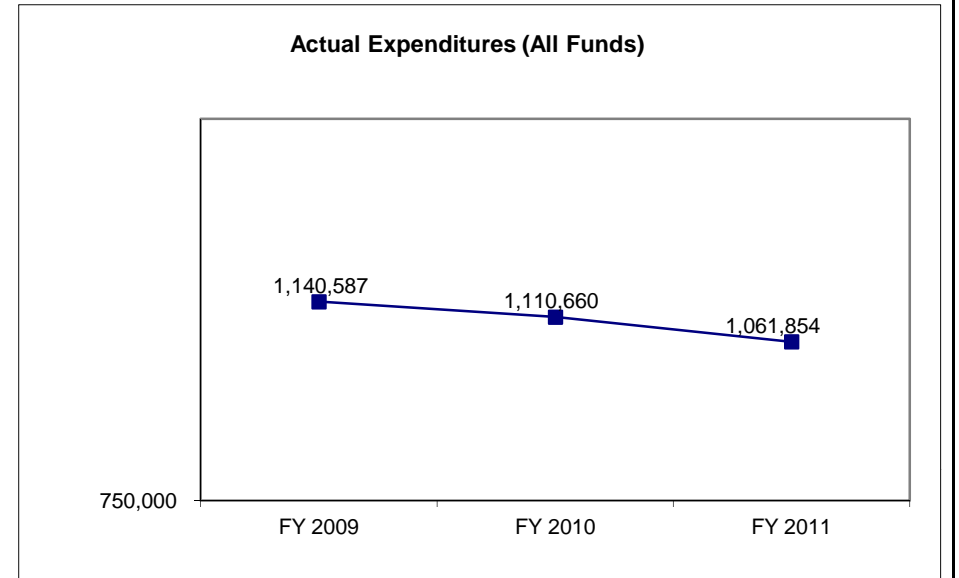
In Fiscal Year 2011 - the Missouri State Public Defender System intercepted approximately \$1,004,000 of Missouri State Income Tax Refunds from the Department of Revenue to past clients who have outstanding debts to the State Public Defender System.

CORE DECISION ITEM

Department	Office of the State Public Defender	Budget Unit	15161C
Division	Public Defender		
Core -	Debt Offset Excrow Fund	Core Request	

4. FINANCIAL HISTORY

	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Current Yr.
Appropriation (All Funds)	350,000	350,000	350,000	350,000
Less Reverted (All Funds)	0	0	0	0
Budget Authority (All Funds)	350,000	350,000	350,000	350,000
Actual Expenditures (All Funds)	1,140,587	1,110,660	1,061,854	0
Unexpended (All Funds)	(790,587)	(760,660)	(711,854)	350,000
Unexpended, by Fund:				
General Revenue	0	0	0	0
Federal	0	0	0	0
Other	0	0	0	0



Reverted includes Governor's standard 3 percent reserve (when applicable) and any extraordinary expenditure restrictions.

NOTES:

State Public Defender

DECISION ITEM DETAIL

Budget Unit	FY 2011	FY 2011	FY 2012	FY 2012	FY 2013	FY 2013	*****	*****
Decision Item	ACTUAL	ACTUAL	BUDGET	BUDGET	DEPT REQ	DEPT REQ	SECURED	SECURED
Budget Object Class	DOLLAR	FTE	DOLLAR	FTE	DOLLAR	FTE	COLUMN	COLUMN
DEBT OFFSET ESCROW FUND								
CORE								
REFUNDS	1,061,854	0.00	350,000	0.00	350,000	0.00	0	0.00
TOTAL - PD	1,061,854	0.00	350,000	0.00	350,000	0.00	0	0.00
GRAND TOTAL	\$1,061,854	0.00	\$350,000	0.00	\$350,000	0.00	\$0	0.00
GENERAL REVENUE	\$0	0.00	\$0	0.00	\$0	0.00		0.00
FEDERAL FUNDS	\$0	0.00	\$0	0.00	\$0	0.00		0.00
OTHER FUNDS	\$1,061,854	0.00	\$350,000	0.00	\$350,000	0.00		0.00

SUPPLEMENTAL NEW DECISION ITEM

Department	Office of the State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Contract Case Overload to the Private Bar	DI#	2151001
		Original FY 2012 House Bill Section, if applicable	HB12.400

1. AMOUNT OF REQUEST

	FY 2012 Supplemental Budget Request			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	3,263,156	0	0	3,263,156
PSD	0	0	0	0
TRF	0	0	0	0
Total	3,263,156	0	0	3,263,156

FTE	0.00	0.00	0.00	0.00
POSITIONS	0	0	0	0

NUMBER OF MONTHS POSITIONS ARE NEEDED: _____

Est. Fringe	0	0	0	0
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Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

	FY 2012 Supplemental Governor's Recommendation			
	GR	Federal	Other	Total
PS	0	0	0	0
EE	0	0	0	0
PSD	0	0	0	0
TRF	0	0	0	0
Total	0	0	0	0

FTE	0.00	0.00	0.00	0.00
POSITIONS	0	0	0	0

NUMBER OF MONTHS POSITIONS ARE NEEDED: _____

Est. Fringe	0	0	0	0
--------------------	---	---	---	---

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. WHY IS THIS SUPPLEMENTAL FUNDING NEEDED? INCLUDE THE FEDERAL OR STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS PROGRAM.

As set out in the Program Description, the state is obligated under both the U.S. Constitution Amendment VI and the Missouri Constitution, Article I, Section 18A to provide criminal defense lawyers for the indigent defendants. Chapter 600 RSMo assigns that responsibility to the Missouri State Public Defender System.

In the last five years, four separate studies have been done of the Missouri State Public Defender System and all have reached the same conclusion: Missouri's Public Defender System "is operating in crisis mode" and "the probability that public defenders are failing to provide effective assistance of counsel and are violating their ethical obligations to their clients increases every day." The last three Chief Justices have warned of this crisis in their State of the Judiciary speeches to the legislature and the U.S. Attorney General, Eric Holder, specifically named Missouri in a speech given in New York last year as an example of a broken indigent defense system.

SUPPLEMENTAL NEW DECISION ITEM

Department	Office of the State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Contract Case Overload to the Private Bar	DI#	2151001
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When there are not sufficient resources to adequately staff the public defender system to handle all the eligible cases, public defenders have no choice but to limit the cases they accept. Anything else forces them to violate their ethical and professional responsibilities, exposing them to malpractice liability and professional discipline against their licenses to practice law.

3. DESCRIBE THE DETAILED ASSUMPTIONS USED TO DERIVE THE SPECIFIC REQUESTED AMOUNT. (How did you determine that the requested number of FTE were appropriate? How many positions do the requested FTE equal and for how many months do you need the supplemental funding? From what source or standard did you derive the requested levels of funding? Were alternatives such as outsourcing or automation considered? If based on new legislation, does request tie to TAFP fiscal note? If not, explain why.)

This option presumes that (1) Missouri's public defender system current attorney staffing, caseload, and contract fee schedule all remain unchanged, (2) that MSPD continues its current practice of contracting out second, third, and subsequent co-defendant cases to private counsel, and (3) that MSPD *also* contracts out the remainder of its excess caseload to private counsel.

Cost to contract MSPD's excess caseload - SUPPLEMENTAL \$3,263,156

The Missouri Public Defender Commission has established a Maximum Allowable Workload for each public defender office using a protocol built from national caseload standards and utilizing factors recommended by the American Bar Association. It is designed to strike a balance between the number of hours needed to *effectively* and *constitutionally* handle the cases coming in the door of a defender office and the number of attorney hours available within that office to handle those cases. The protocol is explained under the "Effectiveness Measure" section of the Program Description.

Applying the Maximum Allowable Workload protocol to MSPD's most recent caseload numbers shows that we are currently staffed to effectively handle just 73% of the cases in need of public defenders in Missouri's justice system. If MSPD's attorney staffing is to remain unchanged, as is assumed under this option, then 27% of its caseload would need to be contracted out to private counsel, as compared to the not quite 2% of its caseload that it is currently contracted out to private counsel.

SUPPLEMENTAL NEW DECISION ITEM

Department	Office of the State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Contract Case Overload to the Private Bar	DI#	2151001
		Original FY 2012 House Bill Section, if applicable	HB12.400

As shown in the following chart, the total NAC Modified Case Hours for Fiscal Year 2011 was

Hours Needed for Current Caseload			729,788.00	*	100.00%
Available Hours Per Attorney Per Year to Handle Cases		1737.70			
Number of Trial & Appellate Attorneys		<u>348.50</u>			
Total Attorney Hours Available to Handle Cases		605,588.45			
Less Travel Hours Not Available for Case Work					
Trial Division					
1,460,122 Miles /45 Miles Per Hour	(32,447.24)				
Appellate Division					
54,142 Miles / 45 Miles Per Hour	<u>(1,203.16)</u>				
Total Travel Hours		(33,650.40)			
Less Management Hours Not Available for Case Work					
Trial Division Staff					
279 Attorneys + 158 Staff * 1.5 Hours Per Week	(34,086.00)				
* 52 Weeks					
Appellate Division Staff					
30.5 Attorneys + 18.5 Staff * 1.5 Hours Per Week	<u>(3,822.00)</u>				
* 52 Weeks					
Total Management Hours		(37,908.00)			
Remaining Attorney Hours Available for Case Work			534,030.05		73.18%
Case Hours That Must be Contracted			195,757.95		26.82%

SUPPLEMENTAL NEW DECISION ITEM

Department	Office of the State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Contract Case Overload to the Private Bar	DI#	2151001
		Original FY 2012 House Bill Section, if applicable	HB12.400

At present, MSPD uses the case severity flat fee schedule at the right for cases contracted out to private counsel. Litigation expenses (the cost of transcripts, investigation, experts, or depositions) are not included in these fees but are approved on a case-by-case basis. These costs would be incurred by MSPD whether the case was being handled internally or by private counsel.

MSPD pays an additional fee for cases resolved by trial: Jury Trial \$1,500 for the first day and \$750 for each additional day, partial days are prorated. Bench Trial: \$750 per day prorated

Missouri State Public Defender Private Counsel Fee Schedule		
Case Type	Description	Contract Rates
15	Murder 1st Degree	\$10,000
20	Other Homicide	\$6,000
30D	AB Felony Drug	\$750
30F	AB Felony Other	\$1,500
30X	AB Felony Sex	\$2,000
35D	CD Felony Drug	\$750
35F	CD Felony Other	\$750
35X	CD Felony Sex	\$1,500
45M	Misdemeanor	\$375
45T	Misdemeanor - Traffic	\$375
50N	Juvenile - Non Violent	\$500
50S	Juvenile - Status	\$500
50V	Juvenile - Violent	\$750
65F	Probation Violation - Felony	\$375
65M	Probation Violation - Misd	\$375
110F	Direct Appeals - Felony	\$3,750
110S	Direct Appeal - Misdemeanor	\$500
124A	Rule 24.035 Appeal	\$500
124M	Rule 24.035 Motion	\$500
129A	Rule 29.15 Appeal	\$3,750
129M	Rule 29.15 Motion	\$500

SUPPLEMENTAL NEW DECISION ITEM

Department	Office of the State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Contract Case Overload to the Private Bar	DI#	2151001
		Original FY 2012 House Bill Section, if applicable	HB12.400

The chart on the next page applies the 27% overload to MSPD's current (FY11) caseload as a means of estimating the costs associated with this option of contracting out the MSPD case overload. Cases are contracted out beginning with the simplest, least expensive cases to contract first (e.g. traffic, misdemeanor, juvenile status offenses) and continuing on through increasingly complex cases until the 27% threshold is reached. As shown in the chart below, this results in an estimated cost increase in MSPD's contracting cases of \$13,052,625.

Two *caveats* to this approach are worth noting, however:

First, this option depends on the availability and willingness of qualified private criminal defense attorneys to begin taking significant quantities of public defender cases at rates below what is usually charged in the market for similar cases. Our experience has been that many attorneys are willing to take a *few* cases at that rate, out of personal interest in gaining experience or out of a desire to help out what they know to be a struggling, seriously overloaded public defender system. There is a tipping point, however, where the time involved in doing too many such cases becomes prohibitively expensive given the low fees that accompany them. We do not know where that tipping point is, but need to be aware that once we reach it, this model is likely to cost significantly more than our initial estimates.

Second, the use of flat fee schedules such as MSPD currently uses in contracting indigent defense cases is *widely* criticized by watchers of indigent defense around the country and has been the issue in a number of law suits claiming such low rates violate an indigent defendant's Sixth Amendment right to counsel just as much as an overloaded public defender does. The criticism and litigation has focused on the pressure such a flat fee schedule places on a private counsel to move the case quickly for the least amount of time. The longer the case drags on and the more work that goes into it, the more money the attorney is actually *losing* on the case – providing an economic hardship to those who are conscientious and a strong *disincentive* to quality representation. MSPD does modify its flat fee schedule somewhat to permit a *per diem* increase for cases taken to jury trial, but most jurisdictions that rely on private counsel to provide a significant portion of the state's indigent defense representation pay an hourly contract rate rather than a flat fee based on case type. Even the State of Missouri utilizes an hourly rate in lieu of flat fee in other areas of law involving the payment of outside counsel by the state. For example, Section 536.085(4) of the Revised Statutes of Missouri, sets \$75 per hour as the rate generally paid by the state for outside counsel in administrative and agency proceedings, "unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." As a result, it would probably be best NOT to presume that a widespread increase in the numbers of cases to private counsel could be accomplished with no change in MSPD's current flat fee schedule.

SUPPLEMENTAL NEW DECISION ITEM

Department	Office of the State Public Defender	Budget Unit	15111C
Division	Public Defender - Legal Services		
DI Name	Contract Case Overload to the Private Bar	DI#	2151001
		Original FY 2012 House Bill Section, if applicable	HB12.400

FY2011 ASSIGNED CASES - Trial & Appellate Division Caseload, Adjusted for Withdrawals, 2nd Level Conflicts and Contracted Cases Does Not include Capital or CDU Holds Public Defender Staff Constant and Contracts out Overload Hours				
Case Type		Total Trial & Appellate Adjusted Caseload All Cases	Contract Rates	Amount of \$'s Needed to Contract
45T	Misdemeanor - Traffic	5,510	\$375	\$2,066,250
50S	Juvenile - Status	120	\$500	\$60,000
50N	Juvenile - Non Violent	1,007	\$500	\$503,500
45M	Misdemeanor	14,910	\$375	\$5,591,250
65M	Probation Violation - Misd	4,878	\$375	\$1,829,250
110S	Direct Appeal - Misdemeanor	21	\$500	\$10,500
65F	Probation Violation - Felony	11,245	\$375	<u>\$4,216,875</u>
			Annual Cost	\$14,277,625
			Fiscal Year 2012 Current Budget	<u>\$1,225,000</u>
				\$13,052,625
			Supplemental Request For April 1, 2012 to June 30, 2012 - 3 Months	\$3,263,156

SUPPLEMENTAL NEW DECISION ITEM

Department	Office of the State Public Defender			Budget Unit		15111C				
Division	Public Defender - Legal Services									
DI Name	Contract Case Overload to the Private Bar		DI#	2151001		Original FY 2012 House Bill Section, if applicable				HB12.400
4. BREAK DOWN THE REQUEST BY BUDGET OBJECT CLASS, JOB CLASS, AND FUND SOURCE. IDENTIFY ONE-TIME COSTS.										
	Dept Req	Dept Req	Dept Req	Dept Req	Dept Req	Dept Req	Dept Req	Dept Req	Dept Req	
	GR	GR	FED	FED	OTHER	OTHER	TOTAL	TOTAL	One-Time	
Budget Object Class/Job Class	DOLLARS	FTE	DOLLARS	FTE	DOLLARS	FTE	DOLLARS	FTE	DOLLARS	
							0	0.0	0	
							0	0.0	0	
Total PS	0	0.0	0	0.0	0	0.0	0	0.0	0	
							0		0	
							0		0	
							0		0	
Professional Services - 320	3,263,156						3,263,156		3,263,156	
Total EE	3,263,156		0		0		3,263,156		3,263,156	
Program Distributions							0		0	
Total PSD	0		0		0		0		0	
Transfers							0		0	
Total TRF	0		0		0		0		0	
Grand Total	3,263,156	0.0	0	0.0	0	0.0	3,263,156	0.0	3,263,156	